TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 135.

THE STEAMTUG "RESOLUTE"—A. B. HAMMOND AND E. L. BONNER, CLAIMANTS, APPELLANTS,

vs.

GEORGE DOWSETT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

FILED FEBRUARY 21, 1898.

(16,199.)

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INDEX.

	Original.	Print.
Citation	1	1
Libel	4	2
Order denying application for warrant to issue	10	5
Order allowing libellant to file application for warrant	12	5
Motion for order vacating order denying application for warrant	14	5
Affidavit of John T. Whalley	15	6
Order for warrant of arrest to issue	17	7
Warrant	19	7
Claim of owner	22	9
Claimant's stipulation to abide by and pay decree	24	10
Order granting leave to amend libel	27	11
Amended libel	29	11
Exceptions to amended libel	35	15
Notice of motion for order setting exceptions for hearing	38	16
Order setting exceptions for hearing	40	16
Order setting exceptions for hearing	42	17
Order setting exceptions for hearing	44	17
Order allowing libellant to file amended libel	46	17

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 1, 1897.

	Original.	Print.
Order overruling exceptions and allowing time to answer	48	18
Amended libel	50	18
Exceptions to amended libel	60	24
Stipulation as to hearing	63	25
Final decree	65	25
Cost bill	68	26
Petition for appeal	70	27
Assignment of errors on appeal	72	28
Bond on appeal	75	29
Allowance of appeal and certificate of district judge	78	30
Decree of November 19, 1895	79	30
Order allowing appeal, &c	81	31
Amended libel	82	32
Amended exceptions	90	37
Order extending time to file transcript	91	38
Clerk's certificate to transcript	93	38

1 In the District Court of the United States for the District of Oregon. In Admiralty.

GEORGE DOWSETT, Libellant,
vs.
THE STEAMTUG RESOLUTE—A. B. HAMMOND and E. L. BONNER, Claimants and Appellants.

UNITED STATES OF AMERICA, *ss:*

To George Dowsett, the above-named libellant, and to Messrs. John T. Whalley and Lord & Potter, proctors for said libellant:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States within sixty days from the date hereof, pursuant to an appeal filed in the office of the clerk of the district court of the United States for the district of Oregon, wherein A. B. Hammond and E. L. Bonner are claimants and appellants and George Dowsett, the libellant above named, is respondent, to show cause, if any there be, why the judgment so appealed from should not be corrected and reversed and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 19th day of December, A. D. 1895.

CHARLES B. BELLINGER,
District Judge.

2 STATE OF OREGON, *County of Multnomah,* } *ss:*

Due service of the within citation is hereby accepted, in Multnomah county, Oregon, this 19 day of December, 1895, by receiving a copy thereof, duly certified to as such by Wm. G. Muir, of attorney for appellants.

CHAS. F. LORD,
Of Attorneys for Libellant.

[Endorsed:] No. —. In the district court of the United States for the district of Oregon, department No. —. George Dowsett, libellant, *vs.* The Steamtug Resolute—A. B. Hammond & E. L. Bonner, claimants & appellants. Citation. Filed Dec. 19, 1895. E. D. McKee, clerk U. S. district court. Whalley & Muir, proctors for claimants & appellants.

3 In the District Court of the United States for the District of Oregon, March Term, 1894.

Be it remembered that on the 26th day of April, 1894, there was duly filed in the district court of the United States for the district of Oregon a libel in words and figures as follows, to wit:

4 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

THE STEAMTUG RESOLUTE.

To the Honorable Charles B. Bellinger, judge of the district court of the United States for the district of Oregon:

The libel of George Dowsett, of the city of San Francisco, county of San Francisco, State of California, against The Steamtug Resolute, whereof said George Dowsett was lately chief engineer and whereof Charles Emerson is or lately was her master, her steam engines, boilers, machinery, tackle, apparel, and furniture, and also against all persons lawfully claiming for their interest therein, in a cause of subtraction of wages, civil and maritime, showeth:

Article I.

That your libellant, George Dowsett, is a citizen of the United States and a resident of California.

Article II.

That the steamtug Resolute was at all the times hereinafter mentioned run and operated as a steamtug or towboat in towing vessels and barges on and over the bar between Yaquina bay and the Pacific ocean and waters tributary thereto, all within the district of Oregon, and that said steamtug is now within the district of Oregon.

Article III.

That on or about the — day of October, 1889, the said steamtug Resolute, whereof William Ricketts was master, being at Yaquina, Oregon, and destined to towing vessels and barges to and from and over the bar at said Yaquina, Oregon, and to the Pacific ocean, that he, the said William Ricketts, by himself or his agent, did ship and hire the said libellant to serve as chief engineer on board the said steamtug for and during her said various towing voyages
5 and trips to and from the Pacific ocean and Yaquina bay, within the district of Oregon, at the rate of $150 per month, and that for the due performance of said voyages the libellant always stood ready and willing; that said contract was made by verbal agreement, your libellant having signed no shipping articles, but in pursuance of said agreement immediately entered the services of the said steamtug as chief engineer.

Article IV.

That during the various times between the said — day of October, 1889, and the 17th day of March, 1893, said steamtug was engaged in various voyages in towing vessels, as aforesaid, until the said 17th day of March, 1893, when said steamtug was tied up and your libellant discharged from the services of said vessel.

Article V.

That during the whole time your libellant was in the services of said steamtug he well and truly performed his duties according to *the* best ability, and was obedient to all lawful demands of the said master and of other officers of said steamtug, and deserves and ought to be paid amounting to the sum of $823.50; but, although the same has been demanded of the said master, he refuses to pay them or any part thereof, and there is now due the said sum of $823.50.

Article VI.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court, and that said vessel is now in the hands of a receiver of the circuit court of the State of Oregon for Benton county, and that your libellant is in extreme need and has no means of support.

Your libellant, for a second cause of suit against the steamtug Resolute, upon information and belief alleges:

6 Article I.

That during all the times hereinafter mentioned the said steamtug Resolute was run and operated as a steamtug or towboat in towing vessels and barges on and over the bar between Yaquina bay and the Pacific ocean, within the district of Oregon, and the said steamtug is now within the district of Oregon.

Article II.

That on or about the — day of October, 1889, the said steamtug Resolute, whereof the said William Ricketts was master, being at Yaquina, Oregon, and destined to towing vessels and barges to and from and over the bar at said Yaquina, Oregon, to the Pacific ocean, that he, the said William Ricketts, by himself or his agents, did ship and hire one Tellef Tellefson to serve as fireman on board the said steamtug for and during her said various towing voyages and trips and from and over the bar at Yaquina bay and to the Pacific ocean at the rate of $65 per month, and that for the due performance of said voyages Tellef Tellefson always stood ready and willing on his part; that no shipping articles were signed by said Tellef Tellefson, said agreement being made verbally, and that in pursuance of said agreement said Tellef Tellefson immediately entered the services of said steamtug as aforesaid.

Article III.

That during the various times between the said — day of October, 1889, and the 17th day of March, 1893, said steamtug was engaged in various voyages in towing vessels as aforesaid until the said 17th day of March, 1893, when said steamtug was tied up and said Tellef Tellefson discharged from the services of said vessel.

Article IV.

That during the whole time said Tellef Tellefson was in the services of said steamtug he well and truly performed his
7 duties according to his best ability and was obedient to all lawful demands of the said master and of other officers of said steamtug and deserves and ought to be paid amounting to the sum of $358.02, but, although the same has been demanded of the said master, he refuses to pay them or any part thereof, and there is now due the said sum of $358.02.

Article V.

That by reason of the premises the said Tellef Tellefson acquired a lien upon said steamtug Resolute for the sum of $358.02, and that on the — day of March, 1894, said Tellef Tellefson, for a valuable consideration, assigned, transferred, and set over to your libellant his claim and account against the said steamtug Resolute, together with his right to hold a lien upon said steamtug for the payment of the same.

Article VI.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court, and that the said vessel is now in the hands of a receiver of the circuit court of the State of Oregon for Benton county, and that your libellant is in extreme need and has no means of support.

Wherefore your libellant prays this honorable court that process in due form of law, according to the course of courts of admiralty and of this honorable court and in cases of admiralty and maritime jurisdiction, may issue against the said steamtug, her engine, boilers, machinery, tackle, apparel, and furniture, and that all persons claiming any right, title, or interest therein may be cited to appear and answer upon oath all the matters aforesaid, and that this honorable court will be pleased to decree the payment of the wages claimed herein, to wit, the sum of $1,181.52, and with costs, and that said vessel may be condemned and sold to pay the same, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

JOHN T. WHALLEY,
CHAS. F. LORD,
Proctors for Libellant.

8 STATE OF OREGON,)
County of Multnomah,) ss:

I, George Dowsett, being first duly sworn, say that I am the libellant in the above-entitled suit, and that the foregoing libel is true, as I verily believe.

GEORGE DOWSETT.

Subscribed and sworn to before me this 16 day of March, 1894.
[SEAL.] JOHN T. WHALLEY,
Notary Public for Oregon.

Endorsed: Filed April 26, 1894. R. B. Lamson, clerk.

9 And afterwards, to wit, on Friday, the 27th day of April, 1894, the same being the 47th judicial day of the regular March term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

10 In the District Court of the United States for the District of Oregon.

THE TUG RESOLUTE—GEORGE DOWSETT, Libellant. No. 3732.

APRIL 27, 1894.

Now, at this day, this cause comes on to be heard upon the application of the libellant for an order for the issuance of a warrant of arrest and monition herein, and was argued by Mr. Chas. F. Lord and Mr. J. T. Whalley, of counsel for said libellant; on consideration whereof it is ordered that said application be, and the same is hereby, denied.

11 And afterwards, to wit, on Tuesday, the 19th day of June, 1894, the same being the 92d judicial day of the regular March term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

12 In the District Court of the United States for the District of Oregon.

THE TUG RESOLUTE—GEORGE DOWSETT, Libellant. No. 3732.

JUNE 19, 1894.

Now, at this day, on motion of Mr. J. T. Whalley, of counsel for the libellant, it is ordered that said libellant be, and he is hereby, allowed to file and present an application for an order allowing the issuance of a warrant of arrest in this cause.

13 And afterwards, to wit, on the 25th day of February, 1895, there was duly filed in said court a motion and affidavit in words and figures as follows, to wit:

14 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

THE STEAMTUG RESOLUTE.

Comes now the libellant, George Dowsett, and based on the files and records of this suit and the affidavit of J. T. Whalley, hereto-

fore filed herein, moves the court for an order vacating the order heretofore, on the 27th day of April 1894, made herein directing that the libel in this cause should remain in abeyance until such time as the said steamtug Resolute should be discharged from the custody of the circuit court of the State of Oregon for Benton county, and directing that a writ of arrest in due form of law may issue against said vessel.

J. T. WHALLEY &
LORD & POTTER,
Proctors for George Dowsett, Libellant.

15 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

THE STEAMTUG RESOLUTE.

STATE OF OREGON, } ss:
County of Multnomah, }

I, J. T. Whalley, being first duly sworn, say that I am one of the proctors for the libellant, George Dowsett, in the above-entitled cause and make this affidavit on his behalf; that the libel of said George Dowsett was filed with the clerk of this court on the — day of ——, 1894, and the judge thereof refused to sign or have issued a writ of arrest for said vessel, for the reason that the said vessel was at that time in the custody of the circuit court of the State of Oregon for Benton county by virtue of a certain order theretofore by said court made in a certain suit pending in said court, appointing a receiver for all the property of the Oregon Pacific Railroad Company, to which company the said vessel at that time belonged; that on the 27th day of April, 1894, subsequent to the filing of the libel of the said George Dowsett, by an order duly made, directed that the said libel should remain in abeyance until such time as the said vessel should be released from the custody of the said circuit court of the State of Oregon for Benton county.

That the receiver of the said Oregon Pacific Railroad Company has been discharged by the said court and the property thereof, including the said steamtug Resolute, sold, and said sale by said court confirmed, and said vessel is no longer within the custody of said court.

JOHN T. WHALLEY.

Subscribed and sworn to before me this 15 day of February, 1895.

[SEAL.] T. S. POTTER,
Notary Public for Oregon.

Endorsed: Filed February 25, 1895. R. B. Lamson, clerk.

16 And afterwards, to wit, on the 25th day of February, 1894, there was duly filed in said court an order in words and figures as follows, to wit:

17 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

THE STEAMTUG RESOLUTE.

On reading and filing the affidavit of J. T. Whalley, and it appearing from said affidavit that the said steamtug Resolute has been discharged from the custody of the receiver heretofore appointed by the circuit court of the State of Oregon for Benton county, on motion of proctors for libellant, George Dowsett, it is ordered that an order made in this cause by this court on the 27th day of April, 1894, directing that the libel in this suit remain in abeyance until such time as the said steamtug Resolute should be discharged from the custody of said circuit court of the State of Oregon for Benton county be, and the same is hereby, vacated, and a writ of arrest in due form of law is directed to issue against the said steamtug Resolute.

CHARLES B. BELLINGER,
District Judge.

Endorsed: Filed February 25, 1895. R. B. Lamson, clerk.

18 And afterwards, to wit, on the 25th day of February, 1895, there was issued out of said court a warrant in words and figures as follows, to wit:

19 *Return in Case of Admiralty Seizure.*

UNITED STATES OF AMERICA, }
District of Oregon, } ss.

In obedience to the command of the within writ I did, on the 1st day of March, 1895, at the port of Toledo or in the district of Oregon, arrest the within-named vessel, the steamtug "Resolute," by going on board of her and seizing and arresting her and taking said steamtug into my custody, together with her tackle, apparel, and furniture, and I served a duly certified copy of this writ at said time upon Joe Morris, who was in charge of said steamtug *and in charge thereof.* I also posted a duly certified copy thereof in a public place in plain view on said steamtug. I served upon Joe Morris, who was in charge of said steamtug, personally a duly certified copy of the complaint in the therein-entitled cause, at the port of Toledo, on the 1st day of March, 1895. I further caused to be published in the daily "Sun," in the said district of Oregon, for fifteen consecutive publications, exclusive of Sundays, the following notice and citation hereto affixed and made a part of this return:

United States Marshal's Notice.

Admiralty Seizure *In re* THE STEAMTUG "RESOLUTE."

Citation.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

Whereas, a libel has been filed in the district court of the United States for the district of Oregon, on the 26th day of April 1894, by Jno. T. Whalley and Lord & Potter, proctors on behalf of George Dawsett as libellant, in a cause of contract for seamen's wages, civil and maritime, against the steamtug "Resolute," her tackle, apparel and furniture, and praying the usual process and monition of the court, that all persons interested in said steamtug, her tackle, apparel, machinery and furniture may be cited to appear and answer the premises and all due proceedings being had, that the said steamtug may be decreed to be sold, and the proceeds thereof distributed according to law.

Therefore, in pursuance of said monition under the seal of the said court, to me directed and delivered on the 25th day of February, 1895, I do hereby give notice, generally, unto all persons having, or pretending to have, any right, title or interest in the said steamtug called the "Resolute," her tackle, apparel, machinery and furniture, to appear before the said court, in the city of Portland, in said district, on Monday, April 1, 1895 next (if it be a court day, or else on next court day thereafter), at 11 o'clock a. m. -noon of said day, then and there to answer the said libel, and to make known their allegations in that behalf.

Dated at Portland, in said district, this 8th day of March, A. D. 1895.

H. C. GRADY,
U. S. Marshal for the District of Oregon.

JNO. T. WHALLEY AND
LORD & POTTER,
Proctors for Libellant.

Subsequently and on the 24 day of March, 1895, upon claim being filed by —— ——, and the said claimant having given a good and sufficient bond in double the amount claimed by the libellant, to wit, in the sum of $2,500.00, which bond was duly approved by T. J. Block, collector of customs, district of Willamette, conditioned to abide by and answer the decree of the court in said cause, I released said steamtug The Resolute to said claimant upon said bond aforesaid, with her tackle, apparel, and furniture. The abovementioned bond is herewith returned.

HENRY C. GRADY,
U. S. Marshal,
By GEO. HUMPHREY, *Deputy.*

Dated at Portland, Oregon, this 24 day of March, 1895.

20 *Warrant of Arrest and Monition.*

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

The President of the United States of America to the marshal of the district of Oregon or his deputy, Greeting:

You are hereby strictly enjoined and commanded that you arrest the vessel called the *the* tug Resolute, whereof Charles Emerson now is or lately was master, her boats, tackle, apparel, and furniture if she shall be found within your district, and the same so arrested you keep under safe and secure arrest until you shall receive further orders from the court or the same shall be discharged in due course of law, and that you site at the premises all persons in general who have or pretend to have any right, title, or interest therein to appear before the judge of the district court of the United States for the district of Oregon, at the city of Portland, on the 1st day of April, A. D. 1895, if it be a court day, or else on the court day next following, at ten o'clock in the forenoon of such day, then and there to answer unto George Dowsett in the cause of contract for wages, civil and maritime, and further to do and to receive in this behalf as to justice shall appertain, and that you duly certify the court aforesaid what you shall do in the premises, together with these presents.

Witness the Honorable Charles B. Bellinger, judge of said court, and the seal thereof, hereto affixed at Portland, in said district, on the 25th day of February, A. D. 1895.

[Seal United States District Court, Oregon.]

R. B. LAMSON, *Clerk*,
By G. H. MARSH,
Deputy Clerk.

Endorsed: Returned and filed October 28, 1895. E. D. McKee, clerk.

21 And afterwards, to wit, on the 2d day of March, 1895, there was duly filed in said court a claim of owner in words and figures as follows, to wit:

22 DISTRICT OF OREGON, *ss:*

To the Hon. Charles B. Bellinger, judge of the district court of the United States for said district:

Edwin Stone, of Portland, Multnomah county, in the district of Oregon, for and on behalf of Bonner & Hammond and as their agent and attorney-in-fact, owners of the vessel called the tug Resolute, her tackle, apparel, and furniture, intervening for interest in said vessel, her tackle, &c., appear- before this honorable court and claim- said vessel, her tackle, &c., and state- that the said Bonner and Hammond are the true and *bona fide* owners thereof; and there-

upon the said claimant prays that this honorable court will be pleased to decree to him a restitution of the said vessel, her tackle, &c., and otherwise right and justice to administer in the premises.

And the said Edwin Stone, being duly sworn, deposes and says that no other persons except the said E. L. Bonner and A. B. Hammond are owners of the said vessel, her tackle, &c., or of any part thereof, and that this affiant is the agent and attorney-in-fact for said owners.

EDWIN STONE.

Subscribed and sworn to before me this 2nd day of March, 1895.

R. B. LAMSON, *Clerk*,
By G. H. MARSH,
Deputy Clerk.

Endorsed: Filed March 2, 1895. R. B. Lamson, clerk.

23 And afterwards, to wit, on the 28th day of October, 1895, there was duly filed in said court claimant's stipulation for costs and to abide by and pay the decree in words and figures as follows, to wit:

24 In the District Court of the United States for the District of Oregon.

GEORGE DOWSETT, Libellant,
vs.
TUG RESOLUTE.

Whereas a libel was filed in the above-entitled court on the 25th day of April, 1894, against the said tug Resolute, her tackle, apparel, and furniture, for the reasons and causes in said libel mentioned, and praying that the same may be condemned and sold to answer the prayer of said libellant, and a claim has been filed by Edwin Stone, agent and attorney-in-fact for Bonner and Hammond, the owners of said vessel called the Resolute, for and on behalf of said owners, and the said claimant and Henry Failing, surety, the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the claimant or his surety execution may issue against their goods, chattels, and lands for the sum of twenty-five hundred dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be and are bound in the sum of twenty-five hundred dollars, gold coin of the United States, conditioned that the claimants above named shall abide by and pay the money awarded by the final decree rendered in the cause by this court or, in case of appeal, by the appellate court.

EDWIN STONE.
HENRY FAILING, *Surety.*

Taken and acknowledged before me this 2nd day of March, 1895.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, Henry Failing, of the city of Portland, county of Multnomah, Oregon, being first duly sworn, depose and say that I reside in the district of Oregon, and that I am a householder in said district and am worth the sum of five thousand dollars over and above all my just debts and liabilities.

25 HENRY FAILING.

Subscribed and sworn to before me this 2nd day of March, 1895.

[SEAL.] A. D. MILLER,
Notary Public in and for Oregon.

I hereby certify that I am personally acquainted with Henry Failing, of the city of Portland, county of Multnomah, Oregon, and know him to be worth the sum set forth in his affidavit over and above his legal liabilities, and the bond is hereby approved.

THOS. J. BLACK,
[SEAL.] *Collector of Customs.*

Endorsed: Filed October 28, 1895. E. D. McKee, clerk.

26 And, to wit, on Monday, the 1st day of April, 1895, the same being the 24th judicial day of the regular March term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

27 In the District Court of the United States for the District of Oregon.

THE TUG RESOLUTE—GEORGE DOWSETT, Libellant; BONNER and HAMMOND, Claimants. No. 3732.

APRIL 1, 1895.

Now, at this day, comes the libellant, by Mr. Charles F. Lord, of counsel, and the claimants, by Mr. W. T. Muir, of counsel, and, on motion of said libellant, it is ordered that he be, and he is hereby, allowed to amend the libel filed herein.

28 And afterwards, to wit, on the 4th day of May, 1895, there was duly filed in said court an amended libel in words and figures as follows, to wit:

29 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

THE STEAMTUG RESOLUTE.

To the Honorable Charles B. Bellinger, judge of the district court of the United States for the district of Oregon:

The amended libel of George Dowsett, of the city of San Francisco, county of San Francisco, State of California, against the steam-

tug Resolute, whereof said George Dowsett was lately chief engineer and whereof Charles Emerson is or lately was her master, her steam-engines, boilers, machinery, tackle, apparel, and furniture, and also against all persons lawfully claiming for their interest therein in a cause of subtraction of wages, civil and maritime, showeth:

Article I.

That your libellant, George Dowsett, is a citizen of the United States and a resident of California.

Article II.

That the steamtug Resolute was at all the times hereinafter mentioned run and operated as a steamtug or towboat in towing vessels and barges on and over the bar between Yaquina bay and the Pacific ocean and waters tributary thereto, all within the district of Oregon, and that said steamtug is now within the district of Oregon.

Article III.

That on or about the — day of October, 1889, the said steamtug Resolute, whereof William Ricketts was master, being at Yaquina, Oregon, and destined to towing vessels and barges to and from and over the bar at said Yaquina, Oregon, and to the Pacific ocean, that he, the said William Ricketts, by himself or — did ship hire the said libellant to serve as chief engineer on board the said steamtug for and during her said various towing voyages and trips to and from the Pacific ocean and Yaquina bay, within the district of Oregon, at the rate of $150 per month, and that for the due performance of said voyages the libellant always stood ready and willing; that said contract was made by verbal agreement, your libellant having signed no shipping articles, but, in pursuance of said agreement, immediately entered the service of the said steamtug as chief engineer.

Article IV.

That during the various times between the said — day of October, 1889, and the 17th day of March, 1893, said steamtug was engaged in various voyages in towing vessels, as aforesaid, until the said 17th day of March, 1893, when said steamtug was tied up and your libellant discharged from the services of said vessel.

Article V.

That during the whole time your libellant was in the services of said steamtug he well and truly performed his duties according to *the* best ability and was obedient to all lawful demands of the said master and of other officers of said steamtug, and deserves and ought to be paid amounting to the sum of $825.50; but, although the same has been demanded of the said master, he refuses to pay them or any part thereof, and there is now due the said sum of $825.50.

Article VI.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court, and that at all the times hereinbefore mentioned said steamtug was in charge of a receiver appointed by the circuit court of the State of Oregon for Benton county, but said steamtug has since been discharged from said receivership.

Your libellant, for a second cause of suit against the steamtug Resolute, upon information and belief alleges:

31 Article I.

That during all the times hereinafter mentioned the said steamtug Resolute was run and operated as a steamtug or towboat in towing vessels and barges on and over the bar between Yaquina bay and the Pacific ocean, within the district of Oregon, and the said steamtug is now within the district of Oregon.

Article II.

That on or about the — day of October, 1889, the said steamtug Resolute, whereof the said William Ricketts was master, being at Yaquina, Oregon, and destined to towing vessels and barges to and from and over the bar at said Yaquina, Oregon, to the Pacific ocean, that he, the said William Ricketts, by himself or his agents, did ship and hire one Tellef Tellefson to serve as fireman on board the said steamtug for and during her said various voyages and trips and from and over the bar at Yaquina bay and to the Pacific ocean at the rate of $65 per month, and that for the due performance of said voyages Tellef Tellefson always stood ready and willing on his part; that no shipping articles were signed by said Tellef Tellefson, said agreement being made verbally, and that in pursuance of said agreement said Tellef Tellefson immediately entered the service of said steamtug as aforesaid.

Article III.

That during the various times between the said — day of October, 1889, and the 17th day of March, 1893, said steamtug was engaged in various voyages in towing vessels as aforesaid until the said 17th day of March, 1893, when said steamtug was tied up and said Tellef Tellefson discharged from the services of said vessel.

Article IV.

That during the whole time said Tellefson was in the services of said steamtug he well and truly performed his duties according
32 to his best ability, and was obedient to all lawful demands of the said master and of other officers of said steamtug, and deserves and ought to be paid amounting to the sum of $358.02, but, although the same has been demanded of the said master, he refuses to pay them or any part thereof, and there is now due the said sum of $358.02.

Article V.

That by reason of the premises the said Tellef Tellefson acquired a lien upon said steamtug Resolute for the sum of $358.02, and that on the — day of March, 1894, said Tellef Tellefson, for a valuable consideration, assigned, transferred, and set over to your libellant his claim and account against the said steamtug Resolute, together with his right to hold a lien upon said steamtug for the payment of the same.

Article VI.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court, and that at all the times hereinbefore mentioned said steamtug was in charge of a receiver appointed by the circuit court of the State of Oregon for Benton county; steamtug has since been discharged from said receivership.

Wherefore your libellant prays this honorable court that process in due form of law according to the course of courts of admiralty and of this honorable court and in cases of admiralty and maritime jurisdiction may issue against the said steamtug, her engine, boilers, machinery, tackle, apparel, and furniture, and that all persons claiming any right, title, or interest therein may be cited to appear and answer upon oath all the matters aforesaid, and that this honorable court will be pleased to decree the payment of the wages claimed herein, to wit, the sum of $1,181.52, and with costs,
33 and that said vessel may be condemned and sold to pay the same, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

JOHN T. WHALLEY AND
LORD & POTTER,
Proctors for Libellant.

STATE OF OREGON, }
County of Multnomah, } ss:

I, Charles F. Lord, being first duly sworn, say that I am one of proctors for the libellant in the above entitled suit, and that the foregoing amended libel is true, as I verily believe; that I make this verification for the reason that the libellant is now without this district.

(Signed) CHAS. F. LORD.

Subscribed and sworn to before me this 27th day of April, 1895.
[SEAL.] (Signed) T. S. POTTER,
Notary Public for Oregon.

STATE OF OREGON, }
Multnomah County, } ss:

Due service of the within amended libel is hereby admitted in Multnomah county this 27th day of April, A. D. 1895.

WHALLEY & MUIR,
Attorneys for the Steamtug Resolute.

Endorsed: Filed May 4, 1895. E. D. McKee, clerk.

34 And afterwards, to wit, on the 4th day of May, 1895, there *was* duly filed in said court exceptions to amended libel in words and figures as follows, to wit:

35 In the District Court of the United States for the District of Oregon.

GEORGE DOWSETT, Libellant,
vs.
THE STEAMTUG RESOLUTE, Respondent; A. B. HAMMOND and E. L. BONNER, Claimants.

To the Honorable Charles B. Bellinger, judge of the district court of the United States for the district of Oregon:

The exceptions of A. B. Hammond and E. L. Bonner, claimants herein, to the libel of the said libellants allege that the said libel is informal and insufficient as follows:

First. That the same shows that at the time the said libellant and at the time the said Tellef Tellefson mentioned therein were employed the said steamtug Resolute was in charge of and being operated by a receiver of the Oregon Pacific Railroad Company, a corporation, the owner of said steamtug, said receiver having been duly appointed by the circuit court of the State of Oregon for Benton county, and that all of the services performed by said libellant and said Tellef Tellefson mentioned in said libel were performed while said steamtug was in possession of and being operated by said receiver, and that no maritime or other lien arose by reason of such employment or the rendition of said services.

Second. That the said libel shows that this court has no jurisdiction in the premises.

Portland, Or., May 4th, 1895.

WHALLEY & MUIR,
Proctors for Claimants.

36 STATE OF OREGON, } ss:
County of Multnomah. }

Due service of the within exceptions is hereby accepted, in Multnomah county, Oregon, this 4th day of May, 1895, by receiving a copy thereof, duly certified to as such by Wm. T. Muir, of proctors for claimant.

JOHN T. WHALLEY AND
LORD & POTTER,
Attorneys for Libellant.

Endorsed: Filed May 4, 1895. E. D. McKee, clerk.

37 And afterwards, to wit, on the 13th day of May, 1895, there was duly filed in said court a notice of motion in words and figures as follows, to wit:

38 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

THE STEAMTUG RESOLUTE.

To Hon. John W. Whalley, William T. Muir, attorneys or proctors for The Steamtug Resolute, the claimants herein:

Please take notice that on Monday, the 13th day of May, A. D. 1895, at the hour of 11 o'clock a. m., and in the court-rooms of said court, we shall move the court for an order setting a time for argument upon the exceptions filed herein.

JOHN T. WHALLEY AND
LORD AND POTTER,
Proctors for Libellant, George Dowsett.

STATE OF OREGON, }
Multnomah County, } *ss:*

Due service of the within notice of motion is hereby admitted, in Multnomah county, this 7th day of May, A. D. 1895.

WHALLEY & MUIR,
Attorneys for Claimants of Steamtug Resolute.

Endorsed: Filed May 13, 1395. E. D. McKee, clerk.

39 And afterwards, to wit, on Monday, the 10th day of June, 1895, the same being the 84th judicial day of the regular March term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

40 In the District Court of the United States for the District of Oregon.

THE STEAMER "RESOLUTE"—GEORGE DOWSETT, Libellant. No. 3732

JUNE 10, 1895.

Now, at this day, on motion of Mr. Wm. T. Muir, of counsel for claimants, it is ordered that this cause be, and the same is hereby, set for hearing on exceptions to the libel on Wednesday, June 19, 1895.

41 And afterwards, to wit, on Saturday, the 13th day of July, 1895, the same being the 11th judicial day of the regular July term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

42 In the District Court of the United States for the District of Oregon.

THE STEAMTUG "RESOLUTE"—GEORGE DOWSETT, Libellant. No. 3732.

JULY 13, 1895.

Now, at this day, on motion of Mr. Wm. T. Muir, of counsel for the claimant-, it is ordered that this cause be, and the same is hereby, set for hearing on exceptions to the libel on Wednesday, July 24, 1895.

43 And afterwards, to wit, on Wednesday, the 24th day of July, 1895, the same being the 20th judicial day of the regular July term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

44 In the District Court of the United States for the District of Oregon.

THE TUG "RESOLUTE"—GEORGE DOWSETT, Libellant. No. 3932.

JULY 24, 1895.

Now, at this day, comes the libellant, by Mr. Charles F. Lord, of counsel, and the claimants, by Mr. W. T. Muir and Mr. J. R. Bryson, of counsel, and, on motion of said claimants, it is ordered that this cause be, and the same is hereby, set for hearing on the exceptions to the libel on Tuesday, August 6, 1895.

45 And afterwards, to wit, on Tuesday, the 6th day of August, 1895, the same being the 31st judicial day of the regular July term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

46 In the District Court of the United States for the District of Oregon.

THE TUG RESOLUTE—GEORGE DOWSETT, Libellant. No. 3732.

AUGUST 6, 1895.

Now, at this day, comes the libellant, by Mr. Charles F. Lord, of counsel, and the claimants, by Mr. W. T. Muir and Mr. J. R. Bryson, of counsel, and thereupon this cause comes on to be heard upon the exceptions to the libel herein, and the court, having heard the arguments of counsel, will advise thereof; whereupon it is ordered that said libellant be, and he is hereby, allowed to file an amended libel herein, and said claimants be, and they are hereby, allowed to file exceptions to said amended libel.

47 And afterwards, to wit, on Tuesday, the 24th day of September, 1895, the same being the 73d judicial day of the

regular July term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

48 In the District Court of the United States for the District of Oregon.

THE TUG RESOLUTE—GEORGE DOWSETT, Libellant. No. 3732.

SEPTEMBER 24, 1895.

This cause was heard upon the exceptions to the libel and was argued by Mr. Charles F. Lord, of counsel for the libellant, and by Mr. W. T. Muir and Mr. J. R. Bryson, of counsel for the claimants. On consideration whereof it is ordered and adjudged that said exceptions be, and the same are hereby, overruled: and on motion of said claimants it is ordered that they be, and they are hereby, allowed ten days from this date in which to answer the libel herein.

49 And afterwards, to wit, on the 12th day of November, 1895, there was duly filed in said court an amended libel in words and figures as follows, to wit:

50 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

THE STEAMTUG RESOLUTE—GEORGE DOWSETT, Libellant.

To the Honorable Charles B. Bellinger, judge of the district court of the United States for the district of Oregon:

The amended libel of Geo. Dowsett, of the city and county of San Francisco, State of California, against the steamtug "Resolute," whereof said Geo. Dowsett was lately chief engineer and whereof Charles Emerson is or lately was her master, her steam-engines, boilers, machinery, tackle, apparel, and furniture, and also against all persons lawfully claiming for their interest therein, in a cause of subtraction of wages, civil and maritime, filed by leave of court first had, showeth:

Article 1.

That your libellant, Geo. Dowsett, is a citizen of the United States and a resident of the State of California.

Article 2.

That the steamtug "Resolute" was at all the times hereinafter mentioned run and operated as a steamtug or towboat in towing vessels and barges on and over the bar between Yaquina bay and the Pacific ocean and the waters tributary thereto and within the district of Oregon, and that said steamtug is now within said district.

Article 3.

That during all the times hereinafter mentioned the steamtug "Resolute" was owned by the Oregon Pacific Railroad Company,

a corporation organized and existing under and by virtue of the laws of the State of Oregon and engaged in owning and building and operating a railway and steamboats within the State of Oregon and on and over the Pacific ocean.

51 Article 4.

That during all the times hereinafter mentioned the steamtug "Resolute" was in the possession of and under the control of certain receivers of said Oregon Pacific Railroad Co. duly appointed by the circuit court of the State of Oregon for the county of Benton in a certain suit wherein The Farmers' Loan and Trust Company, trustees, was plaintiff and the said Oregon Pacific Railroad Co. and The Willamette Valley and Coast Railroad Company were defendants.

Article 5.

That by the order of said court appointing the receivers of *of* said defendants said receivers were required, authorized, and directed to continue the operation of said railroad and steamtugs and vessels as a going concern in the transportation of freight and passengers as a common carrier and the said line of railroad in connection with the line of steamtugs and vessels sailing on and navigating the waters of Yaquina bay, the Pacific ocean, and navigable waters tributary thereto and within the district of Oregon.

Article 6.

That said steamship lines of said defendant were operated in connection with said railroad, including said steamtug "Resolute," — was, while so operated by said receivers and under said orders of said court, operated by said receivers as a necessary, integral part of said steamship line.

Article 7.

That between the — day of Oct., 1889, and the 1st day of Jan., 1894, your libellant was hired by said Oregon Pacific Railroad Company, acting through its said receivers so appointed as aforesaid, to serve as chief engineer on board said steamtug during her various voyages upon Yaquina bay and navigable waters within the district of Oregon and on and over the Pacific ocean at the rate
52 of $150.00 per month, and that for the due performance of said voyages the libellant has always stood ready and willing to obey and *dy* and all lawful orders and demands of the master, officers and owners of said steamtug and the receivers and their agents.

Article 8.

That said contract for service was made by verbal agreement, your libellant having signed no shipping articles, but, in pursuance of said agreement, immediately entered the services of said steamtug as chief engineer and so continued until the 17th day of March,

1893, when said steamtug was tied up and your libellant discharged from the service of said vessel without cause and without payment.

Article 9.

That during the whole time your libellant was in the service of said steamtug he well and truly performed his duties according to the best of his ability and was obedient to all lawful demands of the said master and other officers of said steamtug and deserves and ought to be paid a sum amounting to $825.50, but, although the same has been demanded of the said master and owners thereof, they refuse to pay the same or any part thereof, and there is now due to your libellant from said steamtug "Resolute" the sum of $825.50.

Article 10.

That since your libellant's discharge from the service of said steamtug and up to the — day of Jan., 1895, said steamtug "Resolute" was in the custody of the circuit court of the State of Oregon for the county of Benton, in charge of its receivers, and a seizure of said steamtug was refused by this court.

Article 11.

That on or about the — day of Jan., 1895, the property of
53 said Oregon Pacific railroad, including said steamtug, was, by order of said circuit court of the State of Oregon for the county of Benton, sold to the claimants herein, A. B. Hammond and E. L. Bonner, who now claim to be owners of said steamtug, but your libellant alleges the fact to be that the said purchasers, A. B. Hammond and E. L. Bonner, had notice of the claim of your libellant for a lien against said steamtug "Resolute," as hereinbefore set forth, at and prior to the time of their purchase of said steamtug.

Article 12.

That the receivers before mentioned of said Oregon Pacific Railroad Company were appointed at the instance and request of the Farmers' Loan and Trust Company, trustee, for the purpose of operating road and steamtug as a going concern and to prevent said property from depreciation in value, and that all the employees, and particularly your libellant, were employed by said receivers and their agents for that purpose.

Article 13.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Your libellant for a second cause of suit against the steamtug "Resolute" upon information and belief alleges:

Article 1.

That the steamtug "Resolute" was at all the times hereinafter mentioned run and operated as a steamtug or towboat in towing vessels and barges on and over the bar between Yaquina bay and the Pacific ocean and the waters tributary thereto and within the district of Oregon, and that said steamtug is now within said district.

Article 2.

That during all the times hereinafter mentioned the steamtug "Resolute" was owned by the Oregon Pacific Railroad Com-
54 pany, a corporation organized and existing under and by virtue of the laws of the State of Oregon and engaged in owning and building and operating a railway and steamboats within the State of Oregon and on and over the Pacific ocean.

Article 3.

That during all the times hereinafter mentioned the steamtug "Resolute" was in the possession of and under the control of certain receivers of said Oregon Pacific Railroad Co. duly appointed by the circuit court of the State of Oregon for the county of Benton in a certain suit wherein The Farmers' Loan and Trust Company, trustee, was plaintiff and *that* the said Oregon Pacific Railroad Co. and The Willamette Valley and Coast Railroad Company were defendants.

Article 4.

That by the order of said court appointing the receivers of said defendants *and* receivers were required, authorized, and directed to continue the operation of said railroad and steamtugs and vessels as a going concern in the transportation of freight and passengers as a common carrier and the said line of railroad in connection with the line of steamtugs and vessels sailing on and navigating the waters of Yaquina bay, the Pacific ocean, and navigable waters tributary thereto and within the district of Oregon.

Article 5.

That said steamship lines of said defendant were operated in connection with said railroad, including said steamtug "Resolute," and that said steamtug "Resolute" was, while so operated by said receivers and under said orders of said court, operated by said receivers as a necessary, integral part of said steamship line.

55 Article 6.

That between the 1st day of Jan., 1890, and the 1st day of Jan., 1894, Tellef Tellefson was hired by said Oregon Pacific Railroad Company, acting through its said receivers so appointed as aforesaid, to serve as fireman on board said steamtug during her various voyages upon Yaquina bay and navigable waters within the district of Oregon and on and over the Pacific ocean at the rate of $65.00 per

month, and that for the due performance of said voyages Tellef Tellefson has always stood ready and willing to obey any and all lawful orders and demands of the master, officers, and owners of said steamtug and the receivers and their agents.

Article 7.

That said contract for service was made by verbal agreement, Tellef Tellefson having signed no shipping articles, but, in pursuance of said agreement, immediately entered the services of said steamtug as fireman and so continued until the 17th day of March, 1893, when said steamtug was tied up and Tellef Tellefson discharged from the service of said vessel without cause or without payment.

Article 8.

That during the whole time Tellef Tellefson was in the service of said steamtug he well and truly performed his duties according to the best of his ability and was obedient to all lawful demands of the said master and other officers of said steamtug and deserves and ought to be paid a sum amounting to $358.02, but, although the same has been demanded of the said master, he refuses to pay the same or any part thereof, and there is now due Tellef Tellefson from said steamtug "Resolute" the sum of $358.02.

Article 9.

That since Tellef Tellefson's discharge from the service of
56 said steamtug and up to the — day of Jan., 1895, said steamtug "Resolute" was in the custody of the circuit court of the State of Oregon for the county of Benton, in charge of its receivers, and a seizure of said steamtug was refused by this court.

Article 10.

That on or about the — day of Jan., 1895, the property of said Oregon Pacific railroad, including said steamtug was by the order of said circuit court of the State of Oregon for the county of Benton sold to the claimants herein, A. H. Hammond and E. L. Bonner, who now claim to be owners of said steamtug, but Tellef Tellefson alleges the fact to be that the said purchasers, A. H. Hammond and E. L. Bonner, had notice of the claim of Tellef Tellefson for a lien against said steamtug "Resolute," as hereinbefore set forth, at and prior to the time of their purchase of said steamtug.

Article 11.

That the receivers before mentioned of said Oregon Pacific Railroad Co. were appointed at the instance and request of the Farmers' Loan and Trust Co., trustee, for the use and purpose of operating road and steamtug as a going concern and to prevent said property from depreciation in value, and that all the employees, and particularly Tellef Tellefson, *were* employed by said receivers and their agents for that purpose.

Article 12.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Article 13.

That by reason of the premises the said Tellef Tellefson acquired a lien upon said steamtug "Resolute" for the sum of $358.02, and that on the — day of March, 1894, said Tellef Tellefson, for a
57 valuable consideration, assigned, transferred, and set over to your libellant his claim and account against the said steamtug "Resolute," together with his right to hold a lien upon said steamtug for the payment of the same, and that your libellant is now the owner and holder of the same.

Wherefore your libellant prays this honorable court that process in due form of law, according to the course of courts of admiralty and of this honorable court and in cases of admiralty and maritime jurisdiction, may issue against the said steamtug, her engines, boilers, machinery, tackle, apparel, and furniture, and that all persons claiming any right, title, or interest therein may be cited to appear and answer upon oath all matters aforesaid, and that this honorable court will be pleased to decree the payment of the wages claimed herein, to wit, the sum of $1,181.52, and with costs, and that said vessel may be condemned and sold to pay the same, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

JOHN T. WHALLEY AND
LORD & POTTER,
Proctors for the Libellant.

STATE OF OREGON, } ss:
Multnomah County, }

I, John T. Whalley, being first duly sworn, say that I am one of the proctors for the libellant in the above-entitled suit, and that the foregoing amended libel is true as I verily believe; that I make this verification for the reason that said libellant is now without this district.

JOHN T. WHALLEY.

Subscribed and sworn to before me this 19th day of October, 1895.

CHAS. F. LORD,
Notary Public for Oregon.

[SEAL.]

58 STATE OF OREGON, } ss:
Multnomah County, }

Due service of the within amended libel is hereby admitted, in Multnomah county, this 19th day of Octo., A. D. 1895.

WHALLEY & MUIR,
Proctors for Claimants.

Endorsed: Filed November 12, 1895. E. D. McKee, clerk.

59 And, to wit, on the 12th day of August, 1895, there *was* duly filed in said court exceptions to amended libel in words and figures as follows, to wit:

60 In the District Court of the United States for the District of Oregon.

GEORGE DOWSETT, Libellant,
vs.
THE STEAMTUG RESOLUTE, Respondent; A. B. HAMMOND and E. L. BONNER, Claimants.

To the Honorable Charles B. Bellinger, judge of the district court of the United States for the district of Oregon:

The amended exceptions of A. B. Hammond and E. L. Bonner, claimants herein, to the amended libel of said libellants filed by leave of court and consent of parties, allege that the said libel is informal and insufficient as follows:

First. That the same shows that at the time the said libellant and *and* at the time the said Tellef Tellefson, mentioned therein, were employed the said steamtug Resolute was in charge of and being operated by a receiver of the Oregon Pacific Railroad Company, a corporation, the owner of said steamtug, said receiver having been duly appointed by the circuit court of the State of Oregon for Benton county, and that all of the services performed by said libellant and said Tellef Tellefson, mentioned in said libel, were performed while said steamtug was in the possession of and being operated by said receiver, and that no maritime or other lien arose by reason of such employment or the rendition of said services.

Second. That the said libel shows that this court has no jurisdiction in the premises in either the alleged first or second cause of suit.

Third. That said libel shows that the claim of said George Dowsett mentioned in said libel in an alleged second cause of suit, amounting to the alleged sum of $358.02, has been assigned to said libellant, Geo. Dowsett, and that claims of the character
61 described, when assigned, are stripped of the privilege of a lien upon the vessel.

Portland, Or., Aug. 12, 1895.

J. W. WHALLEY,
WM. T. MUIR,
J. R. BRYSON,
Proctors for Claimants.

STATE OF OREGON, } ss.
County of Multnomah, }

Due service of the within amended exceptions *are* hereby accepted, in Multnomah county, Oregon, this 8th day of Aug., 1895, by receiving a copy thereof duly certified to as such by Wm. T. Muir, of proctors for claimants.

CHAS. F. LORD,
Proctor for Libellants.

Endorsed: Filed August 12, 1895. E. D. McKee, clerk.

62 And afterwards, to wit, on the 12th day of November, 1895, there was duly filed in said court a stipulation in words and figures as follows, to wit:

63 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

THE STEAMTUG RESOLUTE.

It is hereby stipulated and agreed by and between the proctors for the libellants and claimants that this cause was heard in the district court upon the amended libel and the amended exceptions thereto, and that when said exceptions were overruled the claimants did not desire to answer, but desired to stand upon said exceptions.

JOHN T. WHALLEY &
LORD & POTTER,
Proctors for Libellants.
WM. T. MUIR,
Of Proctors for Claimants.

Endorsed: Filed November 12, 1895. E. D. McKee, clerk.

64 And afterwards, to wit, on Tuesday, the 19th day of November, 1895, the same being the 14th judicial day of the regular November term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

65 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

THE STEAMTUG RESOLUTE—GEO. DOWSETT, Libellant.

This cause was heard upon the amended libel of Geo. Dowsett and the amended exceptions thereto filed by the claimants, A. B. Hammond and E. L. Bonner, and the said exceptions and each of them were heretofore overruled and the claimants obtained leave to answer; and it now appearing to the court that the claimants have failed to answer the said libel within the time allowed by the order of the court heretofore entered, and that, as appears by the stipulation of the proctor for the claimants on file, the said claimants do not desire to answer said libel and elect to stand upon said exceptions, and the said claimants being now in default, said default, on motion of Lord & Potter, proctors for said libellant, is hereby entered against said steamtug Resolute and against said claimants, A. B. Hammond and E. L. Bonner; and it further appearing to the court that the said steamtug Resolute, her boilers, engines, machinery, tackle, apparel, and furniture, are indebted to the libellant herein, as set forth in his said libel, in the following sums, namely:

For services performed on said steamtug Resolute in the sum of $825.50;

And it further appearing to the court that the said steamtug Resolute, her boilers, engines, machinery, tackle, apparel, furniture, became indebted to one Tellef Tellefson on the 17th day of March, 1893, in the sum of $358.02 for services performed on board said steamtug Resolute, and that prior to the filing of this libel the said Tellef Tellefson, for a valuable consideration, assigned, trans-
66 ferred, and set over to the libellant, George Dowsett, his said claim and account against said steamtug Resolute, together with the right to hold a lien upon said steamtug for the payment of the same;

And it further appearing to the court that the said steamtug Resolute was released from arrest in this cause upon the stipulation of the claimants, A. B. Hammond and E. L. Bonner, with Henry Failing as surety in the sum of $2,500.00:

It is therefore pronounced, adjudged, and decreed that the said libellant have and recover from the said claimants, A. B. Hammond and E. L. Bonner, and from each of them the sum of $1,183.52 in gold coin of the United States, and that said libellant further recover from said claimants and from each of them their costs and disbursements herein taxed and fixed by the court in the sum of $102.50.

And it is further ordered, considered, and adjudged by the court that in case said sum be not paid into the registry of this court within thirty days from the date of this decree that execution therefor issue against the said claimant and the said Henry Failing, surety, upon the said bond given for the release of the said vessel.

It is further ordered that the clerk distribute said amount as follows:

First, to the payment of the costs and disbursements herein.

Second, to the payment of the amount herein decreed to be due said libellant.

CHARLES B. BELLINGER, *Judge.*

Endorsed: Filed November 19, 1895. E. D. McKee, clerk.

67 And afterwards, to wit, on the 20th day of November, 1895, there was duly filed in said court a cost bill in words and figures as follows, to wit:

68 In the District Court of the United States for the District of Oregon.

GEO. DOWSETT, Libellant, Plaintiff,
vs.
THE TUG RESOLUTE—A. B. HAMMOND and —— BONNER, Defendants & Claimants. } No. —.

Statement of disbursements claimed by the libellant in the above-entitled cause, viz:

Clerk's fees	$16 80
Marshal's fees	28 00

Costs in State circuit court.....	
Attorney's fee, including argument on exceptions.....	25 00
Attorney's fee for taking depositions, at $2.50 each.....	
Depositions.....	
Examiner's fees.....	
Referee's fees.....	
Witness' fees.....	
Publication of monition.....	32 70
Total taxed at.....	102 50

——— ———, *Clerk.*

DISTRICT OF OREGON, *ss:*

I, Chas. F. Lord, one of libellant's proctors, being duly sworn, on my oath say that I am one of the attorneys for the libellants in the above-entitled cause; that the disbursements set forth herein have been actually and necessarily incurred in the prosecution of this suit, and that said libellant is entitled to recover the same from the claimants, as I verily believe.

(Signed) CHAS. F. LORD.

Subscribed and sworn to before me this 19th of Dec., 1895.

[SEAL.] T. S. POTTER,
Notary Public for Oregon.

Service accepted.

WM. T. MUIR,
Of Proctors for Claimants.

Endorsed: Filed November 20, 1895. E. D. McKee, clerk.

69 And, to wit, on the 19th day of December, 1895, there was duly filed in said court a notice of appeal in words and figures as follows, to wit:

70 In the District Court of the United States for the District of Oregon. In Admiralty.

GEORGE DOWSETT, Libellant,
vs.
THE STEAMTUG RESOLUTE—A. B. HAMMOND and E. L. BONNER, Claimants and Appellants.

The above-named claimants, A. B. Hammond and E. L. Bonner, conceiving themselves aggrieved by the final judgment entered herein on the 19th day of November, 1895, in the above-entitled proceedings, do hereby appeal from said final judgment to the Supreme Court of the United States, and they pray that this their appeal may be allowed, and that the question of the jurisdiction of the above-entitled court to render the said judgment be certified to the Supreme Court of the United States, and that a transcript of the record and proceedings and papers upon which said judgment was

was made, duly authenticated, may be sent to the Supreme Court of the United States.

Portland, Or., Dec. 18, 1895.

J. W. WHALLEY &
WM. T. MUIR,
Proctors for Claimants and Appellants.

STATE OF OREGON, } ss:
County of Multnomah, }

Due service of the within petition for appeal is hereby accepted, in Multnomah county, Oregon, this 19 day of December, 1895, by receiving a copy thereof duly certified to as such by Wm. T. Muir, of attorneys for appellants.

CHAS. *L.* LORD,
Of Attorneys for Libellant.

Endorsed: Filed December 19, 1895. E. D. McKee, clerk.

71 And afterwards, to wit, on the 19th day of December, 1895, there was duly filed in said court an assignment of errors in words and figures as follows, to wit:

72 In the District Court of the United States for the District of Oregon. In Admiralty.

GEORGE DOWSETT, Libellant,
vs.
THE STEAMTUG RESOLUTE—A. B. HAMMOND and E. L. BONNER, Claimants and Appellants.

Come now the said A. B. Hammond and E. L. Bonner, and having appealed from the final judgment and decree of the district court of the United States for the district of Oregon to the Supreme Court of the United States in the above-entitled cause of contract, civil and maritime, assigns the following as the errors upon which they intend to rely on said appeal:

First. The district court of the United States for the district of Oregon erred in overruling the exceptions and each of them to the amended libel.

Second. The district court of the United States for the district of Oregon erred in holding that the performance of the services or any of them mentioned in the amended libel gave rise to a maritime lien.

Third. The district court of the United States for the district of Oregon erred in holding that the libellant was entitled to and had a maritime lien on the said steamtug Resolute for the sum due on account of the services mentioned in the amended libel.

Fourth. The district court of the United States for the district of Oregon erred in adjudging and decreeing that the said steamtug Resolute be sold in said proceedings to satisfy the said claim of said libellant.

Fifth. The district court of the United States for the district of Oregon erred in holding that the said court had jurisdiction
73 in the said proceedings as to the claim of the libellant.

Sixth. The said district court of the United States for the district of Oregon erred in holding that libellant, George Dowsett, had acquired or was entitled to a lien upon the said steamtug Resolute on account of the services rendered by said Tellef Tellefson mentioned in said amended libel and under the claim *the* therefor assigned by said Tellef Tellefson to said George Dowsett.

Portland, Or., Dec. 19, 1895.

J. W. WHALLEY &
WM. T. MUIR,
Proctors for Claimants and Appellants.

STATE OF OREGON, } ss:
County of Multnomah, }

Due service of the within assignment of errors is hereby accepted, in Multnomah county, Oregon, this 19 day of December, 1895, by receiving a copy thereof duly certified to as such by Wm. T. Muir, of attorney for appellants.

CHAS. F. LORD,
Of Attorneys for Libellant.

Endorsed: Filed December 19th, 1895. E. D. McKee, clerk.

74 And afterwards, to wit, on the 19th day of December, 1895, there was duly filed in said court an undertaking on appeal in words and figures as follows, to wit:

75 In the District Court of the United States for the District of Oregon. In Admiralty.

GEORGE DOWSETT, Libellant,
vs.
THE STEAMTUG RESOLUTE—A. B. HAMMOND and E. L. BONNER, Claimants & Appellants.

Know all men by these presents that we, A. B. Hammond and E. L. Bonner, the above-named claimants and appellants, principals, and Henry Failing, of the city of Portland, Multnomah county, Oregon, surety, are held and firmly bound unto the above-named George Dowsett in the sum of eleven hundred eighty-three and $\frac{52}{100}$ dollars in gold coin of the United States, with interest and costs and disbursements; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 18th day of December, 1895.

Whereas the above-named A. B. Hammond and E. L. Bonner have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled cause by

the judge of the district court of the United States for the district of Oregon:

Now, therefore, the condition of the obligation is such that if the above-named A. B. Hammond and E. L. Bonner shall prosecute said appeal to effect and answer any judgment and all damages and costs if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

A. B. HAMMOND, [SEAL.]
E. L. BONNER, *Principals*, [SEAL.]
By WM. T. MUIR, *Of Proctors.*
76 HENRY FAILING, *Surety.* [SEAL.]

Approved:
CHARLES B. BELLINGER, *Judge.*

Endorsed: Filed December 19, 1895. E. D. McKee, clerk.

77 And afterwards, to wit, on the 19th day of December, 1895, there was duly filed in said court an allowance of appeal and certificate of U. S. district judge in words and figures as follows, to wit:

78 In the District Court of the United States for the District of Oregon. In Admiralty.

GEORGE DOWSETT, Libellant,
vs.
THE STEAMTUG RESOLUTE—A. B. HAMMOND and E. L. BONNER, Claimants and Appellants.

Be it remembered that on this day in the above-entitled cause came Wm. T. Muir, of proctors for claimants, and filed herein his assignment of errors and petition for an allowance of an appeal herein to the Supreme Court of the United States from the decree herein rendered on the 19th day of November, A. D. 1895; which decree is as follows, to wit:

79 "This cause was heard upon the amended libel of Geo. Dowsett and the amended exceptions thereto filed by the claimants A. B. Hammond and E. L. Bonner, and the said exceptions and each of them were heretofore overruled and the claimants obtained leave to answer; and it now appearing to the court that the claimants have failed to answer the said libel within the time allowed by the order of the court heretofore entered, and that, as appears by the stipulation of the proctor for the claimants on file, the said claimants do not desire to answer said libel and elect to stand upon said exceptions, and the said claimants being now in default, said default, on motion of Lord & Potter, proctors for said libellant, is hereby entered against said steamtug Resolute and against said claimants, A. B. Hammond and E. L. Bonner; and it further appearing to the court that the said steamtug Resolute, her boilers, engines, machinery, tackle, apparel, and furniture, are in-

debted to the libellant herein as set forth in his said libel in the following sums, namely:

For services performed on said steamtug Resolute in the sum of $825.50;

And it further appearing to the court that the said steamtug Resolute, her boilers, engines, machinery, tackle, apparel, furniture, became indebted to one Tellef Tellefson on the 17th day of March, 1893, in the sum of $358.02 for services performed on board said steamtug Resolute, and that prior to the filing of this libel the said Tellef Tellefson for a valuable consideration assigned, trans-

80 ferred, and set over to the libellant, George Dowsett, his said claim and account against said steamtug Resolute, together with the right to hold a lien upon said steamtug for the payment of the same;

And it further appearing to the court that the said steamtug Resolute was released from arrest in this cause upon the stipulation of the claimants, A. B. Hammond and E. L. Bonner, with Henry Failing as surety, in the sum of $2,500.00:

It is therefore pronounced, adjudged, and decreed that the said libellant have and recover from the said claimants, A. B. Hammond and E. L. Bonner, and from each of them, the sum of $1,183.52 in gold coin of the United States, and that said libellant further recover from said claimants and from each of them their costs and disbursements herein, taxed and fixed by the court in the sum of $102.50.

And it is further ordered, considered, and adjudged by the court that in case said sum be not paid into the registry of this court within thirty days from the date of this decree that execution therefor issue against the said claimant- and the said Henry Failing, surety, upon the said bond given for the release of the said vessel.

It is further ordered that the clerk distribute said amount as follows:

First. To the payment of the costs and disbursements herein.

Second. To the payment of the amount herein decreed to be due said libellant.

CHARLES B. BELLINGER, *Judge.*"

81 And in open court the said claimants, by their said proctors, prayed that said appeal be allowed, and tendered a bond, with sufficient surety, to the approval of the court, and which bond is hereby approved, to stay proceedings herein until said appeal shall have been determined; and thereupon the court hereby allows said appeal and approves said bond, and execution is hereby stayed until the determination of said appeal, and this court does hereby certify and make known unto the Supreme Court of the United States that the only question arising upon said appeal is the question as to whether or not, under the facts stated in the amended libel and the exceptions thereto, this court acquired or had jurisdiction to hear or pronounce the said decree.

And that the following is a copy of the said amended libel and the exceptions filed thereto:

82

Amended Libel.

"The amended libel of Geo. Dowsett, of the city and county of San Francisco, State of California, against the steamtug 'Resolute,' whereof said Geo. Dowsett was lately chief engineer and whereof Charles Emerson is or lately was her master, her steam-engines, boilers, machinery, tackle, apparel, and furniture, and also against all persons lawfully claiming for their interest therein in a cause of subtraction of wages, civil and maritime, filed by leave of court first had, showeth:

Article 1.

That your libellant, Geo. Dowsett, is a citizen of the United States and a resident of the State of California.

Article 2.

That the steamtug 'Resolute' was at all the times hereinafter mentioned run and operated as a steamtug or towboat in towing vessels and barges on and over the bar between Yaquina bay and the Pacific ocean and the waters tributary thereto and within the district of Oregon, and that said steamtug is now within said district.

Article 3.

That during all the times hereinafter mentioned the steamtug 'Resolute' was owned by the Oregon Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Oregon and engaged in owning and building and operating a railway and steamboats within the State of Oregon and on and over the Pacific ocean.

83

Article 4.

That during all the times hereinafter mentioned the steamtug 'Resolute' was in the possession of and under the control of certain receivers of said Oregon Pacific Railroad Co. duly appointed by the circuit court of the State of Oregon for the county of Benton in a certain suit wherein The Farmers' Loan and Trust Company, trustees, was plaintiff and the *the* said Oregon Pacific Railroad Co. and The Willamette Valley and Coast Railroad Company were defendants.

Article 5.

That by the order of said court appointing the receivers of *of* said defendants said receivers were required, authorized, and directed to continue the operation of said railroad and steamtugs and vessels as a going concern in the transportation of freight and passengers as a common carrier and the said line of railroad in connection with the line of steamtugs and vessels sailing on and navigating the waters of Yaquina bay, the Pacific ocean, and navigable waters tributary thereto and within the district of Oregon.

Article 6.

That said steamship lines of said defendant- were operated in connection with said railroad, including said steamtug 'Resolute,' and that said steamtug Resolute was, while so operated by said receivers and under said orders of said court, operated by said receivers as a necessary integral part of said steamship line.

Article 7.

That between the — day of Oct., 1889, and the 1st day of Jan., 1894, your libellant was hired by said Oregon Pacific Railroad Company, acting through its said receivers so appointed as aforesaid, to serve as chief engineer on board said steamtug during her various voyages upon Yaquina bay and navigable waters within the district of Oregon and on and over the Pacific ocean at the rate
84 of $150.00 per month, and that for the due performance of said voyages the libellant has always stood ready and willing to obey and/y and all lawful orders and demands of the master, officers, and owners of said steamtug and the receivers and their agents.

Article 8.

That said contract for service was made by verbal agreement, your libellant having signed no shipping articles, but, in pursuance of said agreement, immediately entered the services of said steamtug as chief engineer and so continued until the 17th day of March, 1893, when said steamtug was tied up and your libellant discharged from the service of said vessel without cause and without payment.

Article 9.

That during the whole time your libellant was in the service of said steamtug he well and truly performed his duties according to the best of his ability and was obedient to all lawful demands of the said master and other officers of said steamtug, and deserves and ought to be paid a sum amounting to $825.50; but, although the same has been demanded of the said master and owners thereof, they refuse to pay the same or any part thereof, and there is now due to your libellant from said steamtug 'Resolute' the sum of $825.50.

Article 10.

That since your libellant's discharge from the service of said steamtug and up to the — day of Jan., 1895, said steamtug 'Resolute' was in the custody of the circuit court of the State of Oregon for the county of Benton, in charge of its receivers, and a seizure of said steamtug was refused by this court.

Article 11.

That on or about the — day of Jan., 1895, the property of
85 said Oregon Pacific railroad, including said steamtug, was, by order of said circuit court of the State of Oregon for the

county of Benton, sold to the claimants herein, A. B. Hammond and E. L. Bonner, who now claim to be owners of said steamtug, but your libellant alleges the fact to be that the said purchasers, A. B. Hammond and E. L. Bonner, had notice of the claim of your libellant for a lien against said steamtug 'Resolute,' as hereinbefore set forth, at and prior to the time of their purchase of said steamtug.

Article 12.

That the receivers before mentioned of said Oregon Pacific Railroad Company were appointed at the instance and request of the Farmers' Loan and Trust Company, trustee, for the purpose of operating road and steamtug as a going concern, and to prevent said property from depreciation in value, and that all the employees, and particularly your libellant, were employed by said receivers and their agents for that purpose.

Article 13.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Your libellant for a second cause of suit against the steamtug 'Resolute' upon information and belief alleges:

Article 1.

That the steam tug 'Resolute' was at all the times hereinafter mentioned run and operated as a steamtug or towboat in towing vessels and barges on and over the bar between Yaquina bay and the Pacific ocean and the waters tributary thereto and within the district of Oregon, and that said steamtug is now within said district.

Article 2.

That during all the times hereinafter mentioned the steamtug 'Resolute' was owned by the Oregon Pacific Railroad
86 Company, a corporation organized and existing under and by virtue of the laws of the State of Oregon and engaged in owning and building and operating a railway and steamboats within the State of Oregon and on and over the Pacific ocean.

Article 3.

That during all the times hereinafter mentioned the steamtug 'Resolute' was in the possession of and under the control of certain receivers of said Oregon Pacific Railroad Co. duly appointed by the circuit court of the State of Oregon for the county of Benton in a certain suit wherein The Farmers' Loan and Trust Company, trustee, was plaintiff and *that* the said Oregon Pacific Railroad Co. and The Willamette Valley and Coast Railroad Company were defendants.

Article 4.

That by the order of said court appointing the receivers of said defendants *and* receivers were required, authorized, and directed to continue the operation of said railroad and steamtugs and vessels as a going concern in the transportation of freight and passengers as a common carrier and the said line of railroad in connection with the line of steamtugs and vessels sailing on and navigating the waters of Yaquina bay, the Pacific ocean, and navigable waters tributary thereto and within the district of Oregon.

Article 5.

That said steamship lines of said defendant were operated in connection with said railroad, including said steamtug 'Resolute,' and that said steamtug 'Resolute' was, while so operated by said receivers and under said orders of said court, operated by said receivers as a necessary, integral part of said steamship line.

87 Article 6.

That between the 1st day of Jan., 1890, and the 1st day of Jan., 1894, Tellef Tellefson was hired by said Oregon Pacific Railroad Company, acting through its said receivers so appointed as aforesaid, to serve as fireman on board said steamer during her various voyages upon Yaquina bay and navigable waters within the district of Oregon and on and over the Pacific ocean at the rate of $65.00 per month, and that for the due performance of said voyages Tellef Tellefson has always stood ready and willing to obey any and all lawful orders and demands of the master, officers, and owners of said steamtug and the receivers and their agents.

Article 7.

That said contract for service was made by verbal agreement, Tellef Tellefson having signed no shipping articles, but, in pursuance of said agreement, immediately entered the services of said steamtug as fireman and so continued until the 17th day of March, 1893, when said steamtug was tied up and Tellef Tellefson discharged from the service of said vessel without cause or without payment.

Article 8.

That during the whole time Tellef Tellefson was in the service of said steamtug he well and truly performed his duties according to the best of his ability and was obedient to all lawful demands of the said master and other officers of said steamtug and deserves and ought to be paid a sum amounting to $358.02, but, although the same has been demanded of the said master, he refuses to pay the same or any part thereof, and there is now due Tellef Tellefson from said steamtug 'Resolute' the sum of $358.02.

Article 9.

88 That since Tellef Tellefson's discharge from the service of said steamtug and up to the — day of Jan., 1895, said steamtug 'Resolute' was in the custody of the circuit court of the State of Oregon for the county of Benton, in charge of its receivers, and a seizure of said steamtug was refused by this court.

Article 10.

That on or about the — day of Jan., 1895, the property of said Oregon Pacific railroad, including said steamtug, was by the order of said circuit court of the State of Oregon for the county of Benton sold to the claimants herein, A. H. Hammond and E. L. Bonner, who now claim to be the owners of said steamtug, but Tellef Tellefson alleges the fact to be that the said purchasers, A. H. Hammond and E. L. Bonner, had notice of the claim of Tellef Tellefson for a lien against said steamtug 'Resolute,' as hereinbefore set forth, at and prior to the time of their purchase of said steamtug.

Article 11.

That the receivers before mentioned of said Oregon Pacific Railroad Co. were appointed at the instance and request of the Farmers' Loan and Trust Co., trustee, for the use and purpose of operating road and steamtug as a going concern and to prevent said property from depreciation in value, and that all the employees, and particularly Tellef Tellefson, were employed by said receivers and their agents for that purpose.

Article 12.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Article 13.

That by reason of the premises the said Tellef Tellefson acquired a lien upon said steamtug 'Resolute' for the sum of $358.02, and that on the — day of March, 1894, said Tellef Tellefson, for
89 a valuation consideration, assigned, transferred, and set over to your libellant his claim and account against the said steamtug 'Resolute,' together with his right to hold a lien upon said steamtug for the payment of the same, and that your libellant is now the owner and holder of the same.

Wherefore your libellant prays this honorable court that process in due form of law, according to the course of courts of admiralty and of this honorable court and in cases of admiralty and maritime jurisdiction, may issue against the said steamtug, her engines, boilers, machinery, tackle, apparel, and furniture, and that all persons claiming any right, title, or interest therein may be cited to appear and answer upon oath all matters aforesaid, and that this honorable court will be pleased to decree the payment of the wages

claimed herein, to wit, the sum of $1,181.52, and with costs, and that said vessel may be condemned and sold to pay the same, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive."

90 "*Amended Exceptions.*

The amended exceptions of A. B. Hammond and E. L. Bonner, claimants herein, to the amended libel of said libellants, filed by leave of court and consent of parties, alleges that the said libel is informal and insufficient as follows:

First. That the same shows that at the time the said libellant and at the time the said Tellef Tellefson mentioned therein were employed the said steamtug Resolute was in charge of and being operated by a receiver of the Oregon Pacific Railroad Company, a corporation, the owner of said steamtug, said receiver having been duly appointed by the circuit court of the State of Oregon for Benton county, and that all of the services performed by said libellant and said Tellef Tellefson mentioned in said libel were performed while said steamtug was in possession of and being operated by said receiver, and that no maritime or other lien arose by reason of such employment or the rendition of said services.

Second. That the said libel shows that this court has no jurisdiction in the premises in either the alleged first or second cause of suit.

Third. That said libel shows that the claim of said George Dowsell mentioned in said libel, in an alleged second cause of suit, amounting to the alleged sum of $358.02, has been assigned to said libellant, George Dowsett, and that claims of the character described, when assigned, are stripped of the privilege of a lien upon the vessel."

CHARLES B. BELLINGER, *Judge.*

STATE OF OREGON, }
County of Multnomah, } *ss:*

Due service of the within allowance of appeal is hereby accepted, in Multnomah county, Oregon, this 19 day of December, 1895, by receiving a copy thereof, duly certified to as such, by Wm. T. Muir, of attorneys for appellants.

CHAS. F. LORD,
Of Attorneys for Libellant.

Endorsed: Filed December 19, 1895. E. D. McKee, clerk.

91 And afterwards, to wit, on Monday, the 20th day of January, 1896, the same being the 64th judicial day of the regular November term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

92 In the District Court of the United States for the District of Oregon.

THE TUG RESOLUTE—GEORGE DOWSETT, Libellant; E. L. BONNER and A. B. HAMMOND, Claimants. No. 3732.

JANUARY 20, 1896.

Now, at this day, on motion of Mr. William T. Muir, of counsel for the claimants, it is ordered that the time for filing the transcript of record in this cause on appeal to the Supreme Court of the United States be, and the same is hereby, extended thirty days.

CHARLES B. BELLINGER, *Judge.*

93 DISTRICT OF OREGON, *ss:*

I, E. D. McKee, clerk of the United States district court for the district of Oregon, do hereby certify that the foregoing transcript of record and proceedings in cause No. 3732, George Dowsett *vs.* The Steamtug Resolute, is a full, true, and correct transcript of the original record and proceedings in said cause as the same appear at my office and in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said district court, at Portland, in said district, this January 31, 1896.

[Seal United States District Court, Oregon.]

E. D. McKEE,
Clerk United States District Court for the District of Oregon,
By G. H. MARSH,
Deputy Clerk.

Endorsed on cover: Case No. 16,199. Oregon D. C. U. S. Term No., 135. The Steamtug "Resolute"—A. B. Hammond and E. L. Bonner, claimants, appellants, *vs.* George Dowsett. Filed February 21, 1896.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 136.

THE STEAMTUG "RESOLUTE"—A. B. HAMMOND AND E. L. BONNER, CLAIMANTS, APPELLANTS,

vs.

HENRY E. WILSON, SYDNEY G. WOLFKILL, THOMAS NELSON, AND CHARLES JAHN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

FILED FEBRUARY 21, 1898.

(16,200.)

160
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(16,200.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 136.

THE STEAMTUG "RESOLUTE"—A. B. HAMMOND AND E. L. BONNER, CLAIMANTS, APPELLANTS,

vs.

HENRY E. WILSON, SYDNEY G. WOLFKILL, THOMAS NELSON, AND CHARLES JAHN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

INDEX.

	Original.	Print.
Citation	1	1
Libel	4	2
Warrant	10	5
Claim of owner	13	7
Claimants' stipulation to abide by and pay decree	15	7
Exceptions to libel	17	8
Order setting exceptions for hearing	20	9
Order setting exceptions for hearing	22	10
Order setting exceptions for hearing	24	10
Order granting leave to file amended libel, etc	26	10
Order overruling exceptions and allowing time to answer	28	11
Opinion on exceptions	30	11
Amended libel	37	14
Final decree	46	19
Cost bill	50	21

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 1, 1897.

	Original.	Print.
Stipulation as to hearing	52	22
Petition for appeal	54	22
Assignment of errors	56	23
Bond on appeal	59	24
Allowance of appeal and certificate of district judge	62	25
Decree of October 5, 1895	62	25
Order allowing appeal	64	26
Amended libel	65	27
Exceptions	71	31
Order extending time to file transcript	74	31
Clerk's certificate to transcript	75	32

1 In the District Court of the United States for the District of Oregon. In Admiralty.

HENRY E. WILSON, SYDNEY G. WOLFKILL, THOMAS NELSON, and CHARLES JAHN, Libellants,
vs.
THE STEAMTUG RESOLUTE—A. B. HAMMOND & E. L. BONNER, Claimant- and Appellant-.

UNITED STATES OF AMERICA, *ss:*

To Henry E. Wilson, Sydney G. Wolfkill, Thomas Nelson, and Charles Jahn, the above-named libellants, and to Thomas O'Day and Louis H. Tarpley, proctors for said libellants:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States within sixty days from the date hereof, pursuant to an appeal filed in the office of the clerk of the district court of the United States for the district of Oregon, wherein A. B. Hammond & E. L. Bonner *is* appellant- and Henry R. Wilson, Sydney G. Wolfkill, Thomas Nelson, and Charles Jahn, the libellants above named, are respondents, to show cause, if any there be, why the judgment so appealed from should not be corrected and reversed and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 22nd day of November, A. D. 1895.

CHARLES B. BELLINGER,
District Judge.

2 STATE OF OREGON, }
Multnomah County, } *ss:*

Due service of the within citation is hereby accepted this 4*nd* day of Dec., 1895.

Dated Dec. 4th, 1895.

THOS. O'DAY,
Of Proctors for Libellant-.

[Endorsed:] In the district court of the United States for the district of Oregon. In admiralty. Henry E. Wilson *et al.*, libellants & resp., *vs.* The Steamtug Resolute—The Oregon Central & Eastern Railroad Co., claimant & app. Citation. Filed Nov. 25, 1895. E. D. McKee, clerk U. S. district court. Whalley & Muir.

3 In the District Court of the United States for the District of Oregon, March Term, 1895.

Be it remembered that on the 20th day of March, 1895, there was duly filed in the district court of the United States for the district of Oregon a libel in words and figures as follows, to wit:

4 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

To the Honorable Charles B. Bellinger, judge of the district court of the United States for the district of Oregon:

The libel of Henry E. Wilson, Sidney G. Wolfkill, Thomas Nelson, and Charles Jahn, of said district, mariners, late seamen on board the tug "Resolute," whereof one W. J. Ricketts lately was master, against said steamtug "Resolute," her boilers, engines, machinery, tackle, apparel, and furniture, also against all persons lawfully claiming said steamtug or lawfully intervening for their interest in said steamtug, in a cause of wages, civil and maritime, alleges as follows:

Article I.

That your libellants are citizens and inhabitants of the district of Oregon.

Article II.

That the steamtug "Resolute" was at all times hereinafter mentioned run and operated as a steamtug and towboat in towing vessels and barges on and over the bar between Yaquina bay and the Pacific ocean and waters tributary thereto within the district of Oregon and in the navigable waters within said district, and that said steamtug is now within said district of Oregon.

Article III.

That during the years from about January, 1892, until about January 1st, 1894, at the port of Yaquina bay, in the district of Oregon, libellants were employed, hired, and shipped to serve on said steamtug "Resolute," being hired by verbal contract
5 by the receiver of the Oregon Pacific Railway & Navigation Company in charge of and operating all of the property of said Oregon Pacific Railway Company, a corporation duly organized and incorporated under the laws of the State of Oregon, the said Oregon Pacific Railway Company being the owner or reputed owner of said steamtug "Resolute," and said receiver being in possession and operating said steamtug "Resolute," as hereinbefore set forth and stated.

Article IV.

That libellants served on said steamtug during said time under the instructions and charge of the master of said steamtug as follows: The libellant Henry E. Wilson, being engineer of said steamtug, at the agreed price of one hundred and fifty dollars ($150.00) per month; the libellant Thomas Nelson, being mate and assistant seaman on said steamtug, at the agreed price of seventy-five dollars ($75.00) per month; the libellant Charles Jahn, being a seaman in the capacity of sailor on said steamtug "Resolute," at the agreed price of sixty-five dollars ($65.00) per month; the libellant Sidney G. Wolfkill, being fireman on said steamtug, at the agree price of sixty-five dollars ($65.00) per month.

Article V.

That for the due performance of services on said steamtug libellants signed no shipping articles, but were employed under a verbal contract with the receiver or duly authorized agent, as hereinbefore stated, and with the consent and under the direction of the master and owners of said steamtug; that in pursuance of said employment the libellants entered into the service of said steamtug as such seamen, as aforesaid, on or about January 1st, 1892, and
6 continued therein until on or about December 17th, 1893, when they were discharged without just cause by the receiver of said steamtug, the said employment of said libellants being from month to month and said libellants being entitled under their said contract, as aforesaid, to payment of wages in pursuance thereof to and inclusive of the entire month of December, 1894.

Article VI.

During the whole time your libellants were in the service of said steamtug they well and truly performed their duties according to their best ability and in accordance with good seamanship and were obedient to all lawful demands of the said master, officers, and receiver of said steamtug and deserve and ought to be paid for their said services the following sums, due and owing since January 1st, 1894: To libellant Henry E. Wilson, five hundred and fifty-five dollars ($555.00), with interest thereon from said date; to libellant S. G. Wolfkill, two hundred forty and $\frac{50}{100}$ dollars ($240.50), with interest thereon from said date; to libellant Thomas Nelson, four hundred and forty-eight and $\frac{44}{100}$ dollars ($448.44), with interest thereon from said date; to libellant Charles Jahn, the sum of five hundred twenty-nine and $\frac{92}{100}$ dollars ($529.92), with interest thereon from said date.

Article VII.

That the reason your libellants have not sooner enforced their said claims against said steamtug "Resolute" was on account of the fact that said steamtug "Resolute" was in the possession of a receiver of the circuit court of the State of Oregon, duly appointed in a suit pending in said court for the county of Benton and State of Oregon, said court having general jurisdiction for the ap-
7 pointment of a receiver, and said steamtug being in the custody of said receiver so appointed by said court during all the time hereinbefore stated until on or about the — day of January, 1895, when said receiver was discharged and said steamtug "Resolute" released from the custody of said court and is now since that date subject to the jurisdiction and seizure by this court under the claims of the libellants herein, this court refusing to seize said tug during the time same was in the possession of said receiver as hereinbefore set forth and stated.

Article VIII.

That all and singular the premises are true and within the admiralty and — jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said steamtug "Resolute," her engines, boilers, machinery, tackle, apparel, and furniture, and that all persons claiming any right, title, or interest therein may be cited to appear and answer upon oath all the matters aforesaid, and that this honorable court will be pleased to decree the payment of the wages claimed herein, to wit, the sum of seventeen hundred seventy-three and $\frac{96}{100}$ dollars ($1,773.96) aforesaid, with costs, and that said steamtug may be condemned and sold to pay the same, and that the libellants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

HENRY E. WILSON,
SIGNEY G. WOLFKILL,
THOMAS NELSON,
CHARLES JAHN, *Libellants.*

L. H. TARPLEY, *Proctor.*
THOMAS O'DAY, *Advocate.*

8 DISTRICT OF OREGON, }
State of Oregon, County of Multnomah. }

—, Henry E. Wilson, being first duly sworn, on oath say that I am one of the libellants in the above-entitled suit, and that I have read the foregoing libel and know the contents thereof, and that the facts stated therein are true, as I verily believe.

HENRY E. WILSON.

Subscribed and sworn to before me this 9th day of March, 1895.
[SEAL.] THOMAS O'DAY,
Notary Public for Oregon.

Endorsed: Filed March 20, 1895. R. B. Lamson, clerk.

9 And afterwards, to wit, on the 20th day of March, 1895, there was issued out of said court a warrant in words and figures as follows, to wit:

10 *Return in Case of Admiralty Seizure.*

UNITED STATES OF AMERICA, }
District of Oregon, } *ss.:*

In obedience to the command of the within writ I did, on the 22d day of March, 1895, at the port of Yaquina, in the district of Oregon, arrest the within-named vessel, the steamtug "Resolute," by going on board of her and seizing and arresting her and taking

said steamtug into my custody, together with her tackle, apparel, and furniture, and I served a duly certified copy of this writ at said time upon Joseph Morris, who is in charge of said steamtug *and in charge thereof.* I also posted a duly certified copy thereof in a public place in plain view on said steamtug. I served upon Joseph Morris, who is in charge of said steamtug, personally a duly certified copy of the complaint in the therein-entitled cause, at 2 miles E. of Toledo, Or., on the 22d day of March, 1895. I further caused to be published in the Daily Oregonian, in the said district of Oregon, for fifteen consecutive publications, exclusive of Sundays, the following notice and citation hereto affixed and made a part of this return:

United States Marshal's Notice.

Admiralty Seizure. THE TUG "RESOLUTE."

Citation.

UNITED STATES OF AMERICA, *District of Oregon,* } ss:

Whereas, a libel has been filed in the district court of the United States for the district of Oregon, on the 20th day of March, 1895, by Thomas O'Day, proctor, on behalf of Henry E. Wilson *et al.*, as libellants, in a cause of contract for seamen's wages, civil and maritime, against the tug "Resolute," her tackle, apparel and furniture, and praying the usual process and monition of the court, that all persons interested in said tug, "Resolute," her tackle, apparel, machinery and furniture may be cited to appear and answer the premises and all due proceedings being had, that the said tug, "Resolute," may be decreed to be sold, and the proceeds thereof distributed according to law.

Therefore, in pursuance of said monition under the seal of the said court, to me directed and delivered on the 20th day of March, 1895, I do hereby give notice, generally, unto all persons having, or pretending to have, any right, title or interest in the said tug called the "Resolute," her tackle, apparel, machinery and furniture, to appear before the said court, in the city of Portland, in said district, on the 6th day of May, 1895 next (if it be a court day, or else on next court day thereafter), at 10 o'clock forenoon of said day, then and there to answer the said libel, and to make known their allegations in that behalf.

Dated at Portland, in said district, this 21st day of March, A. D. 1895.

H. C. GRADY,
U. S. Marshal for the District of Oregon.

THOMAS O'DAY,
Proctor for Libellants.

Subsequently and on the 22d day of March, 1895, upon claim being filed by E. L. Bonner and A. B. Hammond, and the said claimant having given a good and sufficient bond in double the amount

claimed by the libellant-, to wit, in the sum of $3,600.00, which bond was duly approved by Charles B. Bellinger, U. S. district judge, conditioned to abide by and answer the decree of the court in said cause, I released said steamtug The Resolute to said claimant- upon said bond aforesaid, with her tackle, apparel, and furniture. The above-mentioned bond is herewith returned.

HENRY C. GRADY,
U. S. Marshal,
By J. D. COLEMAN, *Deputy.*

Dated at Portland, Oregon, this 10th day of April, 1895.

11 *Warrant of Arrest and Monition.*

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

The President of the United States of America to the marshal of the district of Oregon or his deputy, Greeting:

You are hereby strictly enjoined and commanded that you arrest the vessel called the "Resolute," whereof W. J. Rickets now is or lately was master, her boats, tackle, apparel, and furniture, if she shall be found within your district, and the same so arrested you keep under safe and secure arrest until you shall receive further orders from the court or the same shall be discharged in due course of law, and that you site at the premises all persons in general who have or pretend to have any right, title, or interest therein to appear before the judge of the district court of the United States for the district of Oregon, at the city of Portland, on the 6th day of May, A. D. 1895, if it be a court day, or else on the court day next following, at ten o'clock in the forenoon of such day, then and there to answer unto Henry E. Wilson, Sidney G. Wolfkill, Thomas Nelson, and Charles Jahn in the cause of contract for seaman's wages, civil and maritime, and further to do and to receive in this behalf as to justice shall appertain, and that you duly certify the court aforesaid what you shall do in the premises, together with these presents.

Witness the Honorable Charles B. Bellinger, judge of said court, and the seal thereof, hereto affixed at Portland, in said district, on the 20th day of March, A. D. 1895.

[Seal United States District Court, Oregon.]

R. B. LAMSON, *Clerk,*
By —— ——, *Deputy Clerk.*

Endorsed: Returned and filed April 10, 1895. R. B. Lamson, clerk.

12 And afterwards, to wit, on the 22d day of March, 1895, there was duly filed in said court a claim of owner in words and figures as follows, to wit:

13 DISTRICT OF OREGON, *ss*:

To the Hon. Charles B. Bellinger, judge of the district court of the United States for said district:

I, W. T. Muir, of the city of Portland, in the district of Oregon, for and on behalf of E. L. Bonner and A. B. Hammond, owners of the vessel called the tug Resolute, her tackle, apparel, and furniture, intervening for interest in said vessel, her tackle, &c., appear before this honorable court and claim said vessel, her tackle, &c., and state that the said E. L. Bonner and A. B. Hammond — the true and *bona fide* owners thereof; and thereupon the said claimant prays that this honorable court will be pleased to decree to him a restitution of the said vessel, her tackle, &c., and otherwise right and justice to administer in the premises.

And the said Wm. T. Muir, being duly sworn, deposes and says that no other persons except the said E. L. Bonner and A. B. Hammond are owners of the said vessel, her tackle, &c., or of any part thereof, and that this affiant is the agent of said owners for the purpose of making claim to said vessel.

WM. T. MUIR.

Subscribed and sworn to before me this 22d day of March, 1895.

R. B. LAMSON, *Clerk*,
By G. H. MARSH,
Deputy Clerk.

Endorsed: Filed March 22, 1895. R. B. Lamson, clerk.

14 And afterwards, to wit, on the 10th day of April, 1895, there was duly filed in said court a claimant's stipulation to abide by and pay the decree in words and figures as follows, to wit:

15 In the District Court of the United States for the District of Oregon.

HENRY E. WILSON, SIDNEY G. WOLFKILL, THOMAS NELSON, and CHARLES JAHN, Libellants.
vs.
THE TUG RESOLUTE. } No. —.

Whereas a libel was filed in this court on March 20th, 1895, by Henry E. Wilson, Sidney G. Wolfkill, Thomas Nelson, and Charles Jahn against the steamtug Resolute, her tackle, apparel, and furniture, for the reasons and causes in said libel mentioned, and praying that the same may be condemned and sold to answer the prayer of said libellants, and a claim has been filed by E. L. Bonner and A. B. Hammond, and the said claimants and Henry Failing, their surety, the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the claimants or their surety execution may issue against their goods, chattels, and lands for the sum of three thousand six hundred $\frac{00}{100}$ dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit

of whom it may concern, that the stipulators undersigned shall be and are bound in the sum of three thousand six hundred $^{00}_{100}$ dollars, conditioned that the claimant above named shall abide by and pay the money awarded by the final decree rendered in the cause by this court, or, in case of appeal, by the appellate court.

E. L. BONNER &
A. B. HAMMOND,
By WM. T. MUIR,
Their Att'y, Claimants.
HENRY FAILING, *Surety.*

Approved:
CHARLES B. BELLINGER, *Judge.*

Taken and acknowledged before me this 22d day of March, 1895.
C. A. LEWIS,
[SEAL.] *Notary Public for Oregon.*

DISTRICT OF OREGON, *ss:*

I, Henry Failing, of Portland, Oregon, being duly sworn, depose and say that I reside in the district of Oregon, and that I am a householder in said district and am worth the sum of eight thousand and $^{00}_{100}$ dollars over and above all my just debts and liabilities.
HENRY FAILING.

Subscribed and sworn to before me this 22nd day of March, 1895.
[Seal Notary Public for Oregon.]
C. A. LEWIS,
Notary Public for Oregon.

Endorsed: Filed April 10, 1895. R. B. Lamson, clerk.

16 And afterwards, to wit, on the 4th day of May, 1895, there was duly filed in said court exceptions of claimants to libel in words and figures as follows, to wit:

17 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

HENRY E. WILSON, SIDNEY G. WOLFKILL, THOMAS NELSON, and CHARLES JOHN, Libellants,
vs.
THE STEAMTUG RESOLUTE, Respondent; A. B. HAMMOND and E. L. BONNER, Claimants.

To the Honorable Charles B. Bellinger, judge of the above-entitled court:

The exceptions of A. B. Hammond and E. L. Bonner, claimants herein, to the libel of said libellants allege that the said libel is informal and insufficient as follows:

First. That the same shows that at the time the said libellants and each of them were employed the said steamtug Resolute was in

charge of and being operated by a receiver of the Oregon Pacific Railroad Company, a corporation, the owner of said steamtug, said receiver having been duly appointed by the circuit court of the State of Oregon for Benton county, and that all of the services performed by said libellants and each of them, mentioned in said libel, were performed while said steamtug was in the possession of and being operated by said receiver, and that no maritime or other lien arose by reason of such employment or the rendition of said services.

Second. That the said libel shows that this court has no jurisdiction in the premises.

Portland, Or., May 4th, 1895.

WHALLEY & MUIR,
Proctors for Claimants.

18 STATE OF OREGON, }
County of Multnomah, } ss:

Due service of the within exceptions is hereby accepted, in Multnomah county, Oregon, this 4th day of May, 1895, by receiving a copy thereof, duly certified to as such, by Wm. T. Muir, proctors for claimant-.

THOMAS O'DAY,
Attorney for Libellants.

Endorsed: Filed May 4, 1895. E. D. McKee, clerk.

19 And afterwards, to wit, on Monday, the 10th day of June, 1895, the same being the 84th judicial day of the regular March term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

20 In the District Court of the United States for the District of Oregon.

THE STEAMER RESOLUTE—HENRY E. WILSON *et al.*, Libellants. No. 3937.

JUNE 10, 1895.

Now, at this day, on motion of Mr. Wm. T. Muir, of counsel for the claimants, it is ordered that this cause be, and the same is hereby, set for hearing on the exceptions to the libel on Wednesday, June 19, 1895.

21 And afterwards, to wit, on Saturday, the 13th day of July, 1895, the same being the 11th judicial day of the regular July term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

22 In the District Court of the United States for the District of Oregon.

THE STEAMTUG RESOLUTE—HENRY E. WILSON *et al.*, Libellants. No. 3937.

JULY 13, 1895.

Now, at this day, on motion of Mr. Wm. T. Muir, of counsel for the claimants, it is ordered that this cause be, and the same is hereby, set for hearing on exceptions to the libel on Wednesday, July 24, 1895.

23 And afterwards, to wit, on Wednesday, the 24th day of July, 1895, the same being the 20th judicial day of the regular July term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

24 In the District Court of the United States for the District of Oregon.

THE TUG RESOLUTE—HENRY E. WILSON *et al.*, Libellants. No. 3937.

JULY 24TH, 1895.

Now, at this day, comes the libellant-, by Mr. Thomas O'Day, of counsel, and the claimants, by Mr. W. T. Muir and Mr. J. R. Bryson, of counsel, and, on motion of said claimants, it is ordered that this cause be, and the same is hereby, set for hearing on the exceptions to the libel on Tuesday, August 6, 1895.

25 And afterwards, to wit, on Tuesday, the 6th day of August, 1895, the same being the 31st judicial day of the regular July term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

26 In the District Court of the United States for the District of Oregon.

THE TUG RESOLUTE—HENRY E. WILSON *et al.*, Libellants. No. 3937.

AUGUST 6, 1895.

Now, at this day, come the libellants, by Mr. Thomas O'Day, of counsel, and the claimants, by Mr. W. T. Muir and Mr. J. R. Bryson, of counsel, and thereupon this cause comes on to be heard upon the exceptions to the libel herein, and the court, having heard the arguments of counsel, will advise thereof.

Whereupon it is ordered that said libellants be, and they are hereby, allowed to file an amended libel herein, and said claimants be, and they are hereby, allowed to file exceptions to said amended libel.

27 And afterwards, to wit, on Tuesday, the 24th day of September, 1895, the same being the 73d judicial day of the regular July term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

28 In the District Court of the United States for the District of Oregon.

THE TUG RESOLUTE—HENRY E. WILSON *et al.*, Libellants. No. 3937.

SEPTEMBER 24, 1895.

This cause was heard upon the exceptions to the libel and was argued by Mr. Thomas O'Day, of counsel for the libellant-, and by Mr. W. T. Muir and Mr. J. R. Bryson, of counsel for the claimants. On consideration whereof it is ordered and adjudged that said exceptions be, and the same are hereby, overruled; and on motion of said claimants it is ordered that they be, and they are hereby, allowed ten days from this date in which to answer the libel herein.

29 And afterwards, to wit, on the 24th day of September, 1895, there was duly filed in said court an opinion on exceptions to libel in words and figures as follows, to wit:

30 In the District Court of the United States for the District of Oregon.

THE STEAMER WILLIAM M. HOAG—R. J. YOUNG *et al.*, Libellants; E. L. BONNER and A. B. HAMMOND, Claimants. No. 3940.

THE STEAMER THREE SISTERS—R. J. YOUNG *et al.*, Libellants; E. L. BONNER and A. B. HAMMOND, Claimants. No. 3941.

THE STEAMTUG RESOLUTE—GEORGE DOWSETT, Libellant; E. L. BONNER and A. B. HAMMOND, Claimants. No. 3732.

THE STEAMTUG RESOLUTE—HENRY E. WILSON *et al.*, Libellant-; E. L. BONNER and A. B. HAMMOND, Claimants. No. 3937.

SEPTEMBER 24, 1895.

BELLINGER, *J.*:

The most important question in these cases, and one that is common to them all, is the question whether a seaman can acquire a lien on a vessel by reason of services rendered while employed by a receiver who has charge of such vessel and is employing it in navigation under the orders of the court appointing him. It is argued against the lien that no lien can attach to property in the custody of the law, and therefore no lien can attach to prop-
31 erty in a receiver's hands; that to authorize a lien the employment must be made or authorized by and the service must be for the benefit, actual or constructive, of the owner; that the relation of the owner to the transaction must be of such a char-

acter that a right of action *in personam* can be maintained against him to recover the debt sought to be enforced as a lien against his property, and that it is against the policy of the law to allow admiralty to interfere with the operation of a vessel by a court having jurisdiction to operate it through a receiver.

The holding in The Esteban De Antunano, 31 Fed., 920, and in The Augustine Kobbe, 37 Fed., 702, is that when a vessel is in the custody of the law by an officer having her in possession under process the authority of her owners and of their agents, the master and ship's husband, to thereafter affect the ship by any conduct or *or* contract to result in a lien on the ship is ended.

In Parker *v.* The Little Acme, 43 Fed., 925, it is held that when a sheriff having possession of a vessel by virtue of a writ of execution ran the boat a few days without the knowledge or consent of the owner no lien would exist in favor of one who acted as master and pilot during the time, but such person must look to the sheriff for his compensation.

In The Young America, 30 Fed., 790, the general and well-understood rule was applied that when a vessel is arrested in admiralty the law requires that she be safely kept by the marshal, and that such officer has no authority to create or permit charges upon the property beyond such as are necessary for its due care and
32 preservation. These cases are relied upon by the claimants as embodying principles necessarily decisive of the cases on trial.

The rule of these cases is against a lien as a result of an unauthorized employment of a vessel by an officer having her in charge. The cases are those of legal custody for safe keeping or for sale under process. The employment of a vessel in such a case by the officer is not authorized; but when the custody is for the purpose of operating the property, of navigating a vessel by a court having jurisdiction, there is no reason to distinguish it from any other authorized employment. The receiver stands in the relation of owner. The expenses of his administration of property managed by him *is* always paid out of the assets in his hands and constitute a first charge upon it. The court appointing a receiver may incumber the property in its custody by the issue of receiver's certificates or may otherwise apply it in its operation. The owner's control is therefore not necessary in such a case to the creation of an obligation enforceable against his property. The objection urged in these cases has reference to the rights of the owner; but the owner's rights are subordinate to the authorized contracts and obligations of the receiver in any case, so that the enforcement of a claim for wages by a proceeding *in rem* does not prejudice the owner in any right which he otherwise has. Does the fact that the wages are earned in an employment by a receiver take the case out of the general rule which confers jurisdiction upon the admiralty courts for any reason?

It is urged that the court appointing the receiver is com-
33 petent to protect the mariner's rights, and that by taking jurisdiction a court of admiralty interferes in the adminis-

tration of the receivership. Maritime liens grow out of the necessities of commerce, and when they are for services they depend upon the character of the employment, and these are not affected by the fact of a receivership.

The character of the ownership or control of a vessel cannot in any case affect its liability nor lessen the necessity for that credit which the law of maritime liens supplies nor render less meritorious the services which that law compensates.

Whether the court appointing the receiver might have provided for the payment of these claims or had the power to do so is not material. It has not done so, and the property is no longer in its custody. The right is a subsisting one under the law, and this court cannot properly refuse to enforce it.

Objection is made to the claims of Young and Rääbe on the ground that the services rendered by them were as masters, and that for such services a lien does not exist. Such is the general rule in admiralty. The State statute, however, provides for a lien without exception as to masters of vessels. I cannot extend the admiralty exception to a case like this created by the State statute unless the case is within the reason that authorizes such exception.

The services in this case were upon a vessel plying between points in the river at which agents were stationed by the receiver,
34 who were clothed with authority to conduct the business of the vessel, thus leaving to the master merely the ordinary duties of navigation. The master was not a representative of the ship authorized to create liens, and is therefore not within the reason of the rule that denies him a lien, nor do I think that such lien is barred by the limitations of the State statute. That statute provides as follows: "All actions against a boat or vessel under the provisions of this title shall be commenced within one year after the cause of action shall have accrued."

This limitation applies to the procedure provided for by the State statute. It relates to the remedial provisions of the statute. It does not qualify the right of lien nor constitute a condition of the lien. The statute provides for actions to enforce the liens it creates, and it limits the time within which such actions shall be brought. All these provisions which undertake to confer upon the State courts this right to bring actions to enforce the lien thus created are void. Hine *v.* Taylor, 4 Wall., 555. And the limitation of such actions is therefore necessarily ineffectual and void.

It is contended that the assignee of the fireman's claim for wages for services on the Resolute cannot enforce the assigned claim; that the lien of a claim for mariner's wages is a personal privilege in the mariner and for the mariner's protection is not assignable. The authorities are not in harmony upon this point. The assignment of a shipwright's lien for repairs is upheld in Park *v.* Hull of the Baxter, 37 Fed., 219, and that of a mariner's lien for wages is upheld in The New Idea, 60 Fed., 294. I am of the opinion
35 that the lien of mariners for wages should stand upon the same footing with those of other laborers upon vessels and of materialmen.

The assignability of a thing enhances its value, and a non-assignable character given to a mariner's lien is more likely to injure than protect the owner. When the services are rendered and the right is perfected there is no more reason to deny the mariner's right to dispose of this property than there is of any other belonging to him. The law guards him against imposition without imposing disabilities upon him in the enjoyment of his property and rights. Unless the assignee is a speculator, or there is other reason to question or suspect the fairness of the transaction, the lien for wages in the hands of the assignee should be enforced.

The exceptions to the libels are overruled.

CHARLES B. BELLINGER, *Judge.*

Endorsed: Filed September 24, 1895. E. D. McKee, clerk.

36 And afterwards, to wit, on the 10th day of August, 1895, there was duly filed in said court an amended libel in words and figures as follows, to wit:

37 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

To the Honorable Charles B. Bellin-er, judge of the district court of the United States for the district of Oregon:

By leave of court first had and obtained, Henry E. Wilson, Sidney G. Wolfkiil, Thomas Nelson, and Charles Jahn, of said district, mariners, late seamen on board the said steamtug "Resolute," whereof W. J. Rickets lately was master, against said steamtug "Resolute," her boilers, engine-, machinery, tackle, apparel, and furniture, also against all persons lawfully claiming said steamtug or lawfully intervening for their interest in said steamtug in a cause of wages, civil and maritime, alleges as follows:

Article I.

That your libellants are citizens and inhabitants of the district of Oregon.

Article II.

That the said steamtug "Resolute" was during the years 1892 and until about January 1st, 1894, and at all times hereinafter mentioned was engaged in the navigating of the waters of the Yaquina bay and Pacific ocean and waters tributary thereto within the district of Oregon and in the navigable waters within said district and of the waters tributary to the Pacific ocean in said district, and that said steamtug "Resolute" is now within said district of Oregon.

Article III.

That during all of said time said steamtug "Resolute" was owned by the Oregon Pacific Railroad Company, a corporation

duly organized under and by virtue of the laws of the State
38 of Oregon for the purpose of building, owning, and operating a railway and steamships within said State of Oregon and within the waters of said State of Oregon and the Pacific ocean and other waters tributary thereto.

Article IV.

That during all said time said steamtug "Resolute" was in the possession and under the control of receivers of said corporation duly appointed by the circuit court of the State of Oregon for the county of Benton in the suit of The Farmers' Loan & Trust Company, trustees, against The Oregon Pacific Railway Company and The Willamette Valley and Coast Railroad Company.

Article V.

That by the order of said court appointing the said receivers the said receivers were required, authorized, and directed to continue the operation of said railroad and steamship line as a going concern in the transportation and carrying of freight and passengers as a common carrier and the said lines of railroad in connection with a line of steamships sailing on and navigating the waters of Yaquina bay, the Pacific ocean, and the navigable waters tributary thereto, including the waters of the navigable rivers within the State of Oregon.

Article VI.

That said steamship lines of said defendant were operated in connection with said railroad, including said steamtug "Resolute," and that said steamtug "Resolute" was, while so operated by the said receivers and under the said orders of said court, operated by said receivers as a necessary, integral part of said steamship line.

39 Article VII.

That during the years from January, 1892, until about January 1st, 1894, at the port of Yaquina bay, in the said district of Oregon, libellants were hired by said Oregon Pacific Railroad Company, acting through and by its said receivers, so appointed as aforesaid, under a verbal contract as seamen and mariners upon said steamtug "Resolute."

Article VIII.

That said libellants served on said steamtug "Resolute" during said time under the instructions and charge of the master of said steamtug "Resolute" as follows: The libellant Henry E. Wilson, being engineer of said steamtug, at the agreed price of one hundred and fifty dollars ($150.00) per month; the libellant Thomas Nelson, being mate and assistant seaman on said steamtug, at the agreed price of seventy-five dollars ($75.00) per month: the libellant Charles Jahn, being a seaman in the capacity of sailor on said steamtug

"Resolute," at the agreed price of sixty-five dollars ($65.00) per month; the libellant Sidney G. Wolfkill, being a fireman on said steamtug, at the agreed price of sixty-five dollars ($65.00) per month.

Article IX.

That for the due performance of services on said steamtug libellants signed no shipping articles, but were employed under a verbal contract with the receivers and duly authorized agents of said railway company, as hereinbefore stated, and with the consent and under the direction of the master and owners of said steamtug; that in pursuance of said employment the libellants entered into the service of said steamtug as such seamen, as aforesaid, on or about January 1st, 1892, and continued therein until on or about
40 December 17th, 1893, when they were discharged without just cause by the receivers of the said steamtug, the said employment of said libellants being from month to month and said libellants being entitled under their said contract, as aforesaid, to payment of wages in pursuance thereof to and inclusive of the entire month of December, 1893.

Article X.

That during the whole time your libellants were in the service of said steamtug they well and truly performed their duties according to their best ability and in accordance with good seamanship and were obedient to all lawful demands of the said master, officers, and owners of said steamtug and ought to be paid for their said services the following sums due them and owing since January 1st, 1894: To libellant Henry E. Wilson five hundred and fifty-five dollars ($555.00), with interest thereon from said date; to libellant S. G. Wolfkill two hundred and forty and $\frac{50}{100}$ dollars ($240.50), with interest thereon from said date; to libellant Thomas Nelson four hundred forty-eight and $\frac{44}{100}$ dollars ($448.44), with interest thereon from said date; to libellant Charles Jahn the sum of five hundred twenty-nine and $\frac{92}{100}$ dollars ($529.92), with interest thereon from said date.

Article XI.

That the reason your libellants have not sooner enforced their said claim against said steamtug "Resolute" was on account of the fact that said steamtug "Resolute" was in the possession of said receivers of the circuit court of Benton county, State of Oregon, as aforesaid, duly appointed in a suit pending in said court, said court having general jurisdiction for the appointment of a receiver and said steamtug being in the custody of said receivers so ap-
41 pointed by said court and being operated under the express order of said court during all the times hereinbefore stated until on or about the — day of January, 1895, when said receiver was discharged and said steamtug "Resolute" released from the custody of said court and is now and since that date subject to seizure by this court under the claims of the libellants herein, this court

refusing to seize said tug at the request of said libellants prior to the time said receiver was discharged, as hereinbefore set forth and stated.

Article XII.

That on or about the — day of January, 1895, the property of said Oregon Pacific Railroad and Navigation Company, including said steamtug, was sold by order of said court of Benton county to the claimants herein, A. B. Hammond and E. L. Bonner, who now claim said steamtug as owners thereof, but libellants allege and charge the fact to be—

That said purchasers, A. B. Hammond and E. L. Bonner, had notice of the claims of your libellants for a lien against said steamtug "Resolute" for wages, as hereinbefore set forth, at and prior to the time of their purchase of said steamtug and purchased the same, knowing that said steamtug "Resolute" was liable to the claims of your libellants, as herein set forth and stated.

Article XIII.

That the said suit of The Farmers' Loan & Trust Company against said Oregon Pacific Railroad Company and The Willamette Valley & Coast Railway Company was brought for the purpose of foreclosing a mortgage or deed of trust which conveyed to the said Farmers' Loan & Trust Company the entire property of the said Oregon
42 Pacific Railroad Company for the purpose of securing an issue of bonds made by the said Oregon Pacific Railroad Company, and that the said receivers so appointed, as aforesaid, were appointed for the purpose of operating said road and steamship line of the said Oregon Pacific Railroad Company, including said steamtug "Resolute," pending the foreclosure of said mortgage or deed of trust and were so appointed at the instance and request of the said Farmers' Loan & Trust Company, trustee aforesaid, for the purpose of operating said road and said steamship line as a going concern and to prevent said property from depreciation in value by the inability of said Oregon Pacific Railroad Company to operate said road without the aid and assistance of receivers appointed in said suit.

Article XIV.

That the wages due said libellants and each of them have been demanded from time to time of the said Oregon Pacific Railroad Company and of said receivers and from the said Hammond and Bonner, and that all of said persons and each of them have refused to pay the wages due the libellants or pay any part thereof, and the said wages due the said libellants and each of them are a lien upon the said steamtug "Resolute" under general statute of the United States providing that the wages of seamen shall be a lien upon the vessel on which said seamen are employed.

Article XV.

That all and singular the premises are true and within the admiralty and — jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray that process in due form of law according to the course of this honorable court in cases of
43 admiralty and maritime jurisdiction may issue against said steamtug "Resolute," her engines, boilers, machinery, tackle, apparel, and furniture, and that all persons claiming any right, title, or interest therein may be cited to appear and answer upon oath all the matters aforesaid, and that this honorable court will be pleased to decree the payment of the wages herein, to wit:

To libellant Henry E. Wilson, the sum of five hundred and fifty-five dollars ($555.00), with interest thereon from January 1st, 1894; to libellant S. G. Wolfkill, two hundred forty and $\frac{50}{100}$ dollars ($240.50), with interest thereon from January 1st, 1894; to libellant Thomas Nelson, four hundred forty-eight and $\frac{44}{100}$ dollars ($448.44), with interest thereon from Jan'y 1st, 1894, and to libellant Charles Jahn, the sum of five hundred twenty-nine and $\frac{92}{100}$ dollars ($529.92), with interest thereon from January 1st, 1894, making a total of seventeen hundred seventy-three and $\frac{96}{100}$ dollars ($1,773.96), and interest thereon from January 1st, 1894, with costs and disbursements, and that said steamtug "Resolute," her engines, boilers, tackle, apparel, and furniture, may be condemned and sold to pay the same, and that same may be declared a first lien upon said boat prior in time and right to all other claims or liens of whatsoever kind or nature, and that libellants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

HENRY E. WILSON.
SIDNEY G. WOLFKILL.
THOMAS NELSON.
CHARLES JAHN.

O'DAY & TARPLEY, *Proctors.*
THOS. O'DAY, *Advocate.*

44 DISTRICT OF OREGON, }
State of Oregon, County of Multnomah. }

I, Henry E. Wilson, being first duly sworn, on oath say that I am one of the libellants in the above-entitled suit, and that I have read the foregoing libel and know the contents thereof, and that the facts stated therein are true as I verily believe.

HENRY E. WILSON.

Subscribed and sworn to before me this 10th day of August, 1895.

[SEAL.] THOMAS O'DAY,
Notary Public for Oregon.

STATE OF OREGON, }
County of ——, } ss:

Due service of the within amended libel is hereby accepted, in Multnomah county, Oregon, this 10 day of August, 1895, by receiving a copy thereof duly certified to as such by Thos. O'Day, proctor for libellants.

WM. T. MUIR,
Of Proctor for Claimants.

Endorsed: Filed August 10, 1895. E. D. McKee, clerk.

45 And afterwards, to wit, on Saturday, the 5th day of October, 1895, the same being the 83d judicial day of the regular July term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding, the following proceedings were had in said case, to wit:

46 In the District Court of the United States for the District of Oregon. In Admiralty. (*In Rem.*)

In the Matter of the Libel of HENRY E. WILSON *et al.*
against
THE STEAMTUG RESOLUTE, HER BOILERS, ENGINES, FURNITURE, APPAREL, ETC.

Now, at this day, the above suit coming on to be heard before the court, and it appearing to the court that the claimants hereinafter named having failed to answer the amended libel of Henry E. Wilson, S. G. Wolfkill, Thomas Nelson, and Charles Jahn filed against the steamtug "Resolute," her boiler, engine, machinery, tackle, apparel, and furniture, as directed by the order of this court, and said steamtug and claimants hereinafter named being in default, said default, on motion of Thomas O'Day, proctor for said libellants, is hereby entered against said steamtug "Resolute," as aforesaid, and against said claimants, A. B. Hammond and E. L. Bonner.

And it further appearing to the court that A. B. Hammond and E. L. Bonner having heretofore appeared in this suit as claimants of said tug "Resolute," her apparel, machinery, engine, boiler, tackle, and furniture, as aforesaid, and having filed a stipulation in this court, conditioned to pay the claim of the libellants herein and each of them, with E. L. Bonner and A. B. Hammond, principals, and Henry Failing, as surety, in the sum of $3,600.00;

And it further appearing to this court that the said steamtug "Resolute," her boilers, engines, machinery, tackle, apparel,
47 and furniture, are indebted to the libellants herein, as set forth in their said libel, in the following sums, viz:

To the libellant Henry E. Wilson, for services performed on said steamtug "Resolute," in the sum of five hundred and fifty-five dollars ($555.00), with interest thereon from January 1st, 1894, to this date; to the libellant S. G. Wolfkill, in the sum of two hundred

forty and $\frac{50}{100}$ dollars ($240.50), with interest thereon from January 1st, 1894, to this date; to the libellant Thomas Nelson, in the sum of four hundred forty-eight and $\frac{44}{100}$ dollars ($448.44), with interest thereon from January 1st, 1894, to this date; to libellant Charles Jahn, in the sum of five hundred twenty-nine and $\frac{92}{100}$ dollars ($529.92), with interest therein from January 1st, 1894, to this date, which several sums, with interest, amounting at this time to the following:

Henry E. Wilson, six hundred thirty and $\frac{20}{100}$ dollars ($630.20); Sidney G. Wolfkill, two hundred seventy-four and $\frac{38}{100}$ dollars ($274.38); Thomas Nelson, five hundred one and $\frac{62}{100}$ dollars ($501.62), and Charles Jahn, six hundred four and $\frac{59}{100}$ dollars ($604.59);

And now, at this time, said Thomas O'Day, proctor for said libellants, moving for a judgment and decree against said steamtug "Resolute" as aforesaid—

It is therefore considered and adjudged by the court that said libellants have and recover from said steamtug "Resolute," her boiler, engine, machinery, tackle, apparel, and furniture, and also against said claimants, A. B. Hammond and E. L. Bonner, and also against said surety, Henry Failing, the following sums—that is to say:

Henry E. Wilson, the sum of six hundred thirty and $\frac{20}{100}$ dollars ($630.20); Sidney G. Wolfkill, the sum of two hundred sev-
48 enty-four and $\frac{38}{100}$ dollars ($274.38); Thomas Nelson, the sum of five hundred one and $\frac{62}{100}$ dollars ($501.62), and Charles Jahn, the sum of six hundred four and $\frac{59}{100}$ dollars ($604.59), all in gold coin of the United States, and that said libellants and each of them further recover from said defendants herein named and each of them their costs and disbursements herein, taxed and fixed by the court in the sum of $96.20, ninety-six $\frac{20}{100}$ dollars.

And it is further ordered, considered, and adjudged by the court that in case said sums and costs be not paid within thirty days from this date that execution issue therefor.

CHARLES B. BELLINGER, *Judge.*

Endorsed: Filed October 5, 1895. E. D. McKee, clerk.

49 And afterwards, to wit, on the 5th day of October, 1895, there was duly filed in said court a cost bill in words and figures as follows, to wit:

50 In the District Court of the United States for the District of Oregon.

HENRY E. WILSON *et al.*, Plaintiff-,
vs.
THE STEAMTUG RESOLUTE and A. B. HAMMOND *et al.*, Claimants, Defendant-. } No. —.

Statement of disbursements claimed by *the* Henry E. Wilson *et al.* in the above-entitled cause, viz:

Clerk's fees	$13 60
Marshal's fees	26 00
Costs in State circuit court	
Attorneys' fee, including exceptions to libel	25 00
Attorneys' fee for taking depositions, at $2.50 each	
Depositions	
Examiner's fees	
Referee's fees	
Witness fees	
Publishing citation	32 70
Keeper fees for Joe Morris, 1 day	2 50
Total taxed at	99 80

E. D. McKEE, *Clerk.*

DISTRICT OF OREGON, *ss:*

I, Thos. O'Day, being duly sworn, on my oath say that I am one of the attorneys for the libellants in the above-entitled cause; that the disbursements set forth herein have been actually and necessarily incurred in the prosecution of this suit, and that said libellants are entitled to recover the same from the defendants, as I verily believe.

THOS. O'DAY.

Subscribed and sworn to before me this 7th October, 1895.

E. D. McKEE, *Clerk,*
By —— ——,
Deputy Clerk.

Endorsed: Filed October 5, 1895. E. D. McKee, clerk.

51 And afterwards, to wit, on the 30th day of October, 1895, there was duly filed in said court a stipulation in words and figures as follows, to wit:

52 In the District Court of the United States for the District of Oregon. In Admiralty.

HENRY E. WILSON *et al.*, Libellants,
vs.
THE TUG RESOLUTE—E. L. BONNER and A. B. HAMMOND, Claimants.

It is hereby stipulated and agreed by and between the proctors for the libellants and claimants that said proceedings came on for hearing before the district court on the last amended libel, and that the amended exceptions were at said trial considered as applying to said last amended libel, and it is agreed that said amended exceptions may and do so apply.

Portland, Or., Oct. 25, '95.

O'DAY & TARPLEY,
Proctors for Libellants.
WM. T. MUIR,
Of Proctors for Claimants.

Endorsed: Filed October 30, 1895. E. D. McKee, clerk.

53 And afterwards, to wit, on the 4th day of November, 1895, there was duly filed in said court a petition for an appeal in words and figures as follows, to wit:

54 In the District Court of the United States for the District of Oregon. In Admiralty.

HENRY E. WILSON, SYDNEY G. WOLFKILL, THOMAS NELSON, and CHARLES JAHN, Libellants,
vs.
THE STEAMTUG RESOLUTE—E. L. BONNER and A. B. HAMMOND, Claimants.

The above-named claimants, E. L. Monner and A. B. Hammond, conceiving themselves aggrieved by the final judgment entered herein on October 5th, 1895, in the above-entitled proceedings, do hereby appeal from said final judgment to the Supreme Court of the United States, and they pray that this their appeal may be allowed, and that the question of the jurisdiction of the above-entitled court to render the said judgment be certified to the Supreme Court of the United States, and that a transcript of the record and proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the Supreme Court of the United States.

Portland, Or., Nov. 1st, 1895.

J. W. WHALLEY &
WM. T. MUIR,
Of Proctors for Claimants.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

Service accepted.
Nov. 4, 1895.

O'DAY & TARPLEY.

Endorsed: Filed November 4, 1895. E. D. McKee, clerk.

55 And afterwards, to wit, on the 4th day of November, 1895, there was duly filed in said court an assignment of errors in words and figures as follows, to wit:

56 In the District Court of the United States for the District of Oregon. In Admiralty.

HENRY E. WILSON, SYDNEY G. WOLFKILL, THOMAS NELSON, and CHARLES JAHN, Libellants,
vs.
THE STEAMTUG RESOLUTE—A. B. HAMMOND and E. L. BONNER, Claimants and Appellants.

Now come the said E. L. Bonner and A. B. Hammond, and, having appealed from the final judgment and decree of the district court of the United States for the district of Oregon to the Supreme Court of the United States in the above-entitled cause of contract, civil and maritime, assign the following as the errors on which they intend to rely on said appeal:

First. The district court of the United States for the district of Oregon erred in overruling the exceptions and each of them to the amended libel.

Second. The district court of the United States for the district of Oregon erred in holding that the performance of the services mentioned in the amended libel gave rise to a maritime lien.

Third. The district court of the United States for the district of Oregon erred in holding that the libellants and each of them were entitled to and had a maritime lien on the said steamtug Resolute for the sums due on account of the services mentioned in the amended libel.

Fourth. The district court of the United States for the district of Oregon erred in adjudging and decreeing that the said steam-
57 tug Resolute be sold in said proceedings to satisfy the said claim of said libellants.

Fifth. The district court of the United States for the district of Oregon erred in holding that the said court had jurisdiction in the said proceedings.

Portland, Or., Nov. 1st, 1895.

J. W. WHALLEY &
WM. T. MUIR,
Of Proctors for Claimants.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

Service accepted.
Nov. 4, '95.

O'DAY & TARPLEY.

Endorsed: Filed November 4, 1895. E. D. McKee, clerk.

58 And afterwards, to wit, on the 4th day of November, 1895, there was duly filed in said court a bond on appeal in words and figures as follows, to wit:

59 In the District Court of the United States for the District of Oregon.

HENRY E. WILSON, SYDNEY G. WOLFKILL, THOMAS NELSON, and CHARLES JAHN, Libellants,
vs.
THE STEAMTUG RESOLUTE—A. B. HAMMOND and E. L. BONNER, Claimants and Appellants.

Know all men by these presents that we, A. B. Hammond and E. L. Bonner, the above-named claimants and appellants, and Henry Failing, of the city of Portland, Multnomah county, Oregon, are held and firmly bound unto the above-named Henry E. Wilson, Sydney G. Wolfkill, Thomas Nelson, and Charles Jahn in the sums following, to wit, the said Henry E. Wilson in the sum of six hundred thirty and $\frac{20}{100}$ dollars and interest, the said Sydney G. Wolfkill in the sum of two hundred seventy-four and $\frac{38}{100}$ dollars and interest, the said Thomas Nelson in the sum of five hundred one and $\frac{62}{100}$ dollars and interest, and the said Charles Jahn in the sum of six hundred four and $\frac{59}{100}$ dollars and interest, and costs and disbursements, the said sums to be paid to said parties respectively; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the — day of November, A. D. 1895.

Whereas the above-named A. B. Hammond and E. L.
60 Bonner have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled cause by the judge of the district court of the United States for the district of Oregon:

Now, therefore, the condition of this obligation is such that if the above-named A. B. Hammond and E. L. Bonner shall prosecute said appeal to effect and answer any judgment and all damages and costs if they fail to make said appeal good, then this obligation

shall be void; otherwise the same shall be and remain in full force and virtue.

A. B. HAMMOND, [SEAL.]
E. L. BONNER, [SEAL.]
By WM. T. MUIR, *Proctor.*
HENRY FAILING, *Surety.* [SEAL.]

Approved:
CHARLES B. BELLINGER, *Judge.*

Endorsed: Filed November 4, 1895. E. D. McKee, clerk.

61 And afterwards, to wit, on the 4th day of November, 1895, there was duly filed in said court an allowance of appeal and certificate of district judge in words and figures as follows, to wit:

62 In the District Court of the United States for the District of Oregon. In Admiralty.

HENRY E. WILSON, SYDNEY G. WOLFKILL, THOMAS NELSON, and CHARLES JAHN, Libellants,
vs.
THE STEAMTUG RESOLUTE—A. B. HAMMOND and E. L. BONNER, Claimants and Appellants.

Be it remembered that on this day in the above-entitled cause came Wm. T. Muir, of proctors for claimants, and filed herein his assignment of errors and petition for an allowance of an appeal herein to the Supreme Court of the United States from the decree herein rendered on the 5th day of October, A. D. 1895; which decree is as follows, to wit:

"Now, on this day, the above suit coming on to be heard before the court, and it appearing to the court that the claimants hereinafter named having failed to answer the amended libel of Henry E. Wilson, S. G. Wolfkill, Thomas Nelson, and Charles Jahn, filed against the steamtug 'Resolute,' her boilers, engine, machinery, tackle, apparel, and furniture, as directed by the order of this court, and said steamtug and claimants hereinafter named being in default, said default, on motion of Thomas O'Day, proctor for said libellants, is hereby entered against said steamtug 'Resolute,' as aforesaid, and against said claimants, A. B. Hammond and E. L. Bonner;

And it further appearing to the court that A. B. Hammond and E. L. Bonner having heretofore appeared in this suit as claimants of said tug 'Resolute,' her apparel, machinery, engine, boiler, tackle, and furniture, as aforesaid, and having filed a stip-
63 ulation in this court conditioned to pay the claim of the libellants herein and each of them, with E. L. Bonner and A. B. Hammond, principals, and Henry Failing, as surety, in the sum of $3,600.00;

And it further appearing to this court that the said steamtug 'Resolute,' her boilers, engine, machinery, tackle, apparel, and furni-

ture, are indebted to the libellants herein as set forth in their said libel in the following sums, viz:

To the libellant Henry E. Wilson for services performed on said steamtug 'Resolute' in the sum of five hundred and fifty-five dollars ($555.00), with interest thereon from January 1st, 1894, to this date; to the libellant S. G. Wolfkill in the sum of two hundred forty and $\frac{50}{100}$ dollars ($240.50), with interest thereon from January 1st, 1894, to this date; to the libellant Thomas Nelson in the sum of four hundred forty-eight and $\frac{44}{100}$ dollars ($448.44), with interest thereon from January 1st, 1894, to this date; to libellant Charles Jahn in the sum of five hundred twenty-nine and $\frac{92}{100}$ dollars ($529.92), with interest thereon from January 1st, 1894, to this date; which several sums with interest amounting at this time to the following:

Henry E. Wilson, six hundred thirty and $\frac{20}{100}$ dollars ($630.20); Sydney G. Wolfkill, two hundred seventy-four and $\frac{38}{100}$ dollars ($274.38); Thomas Nelson, five hundred one and $\frac{62}{100}$ dollars ($501.62), and Charles Jahn, six hundred four and $\frac{59}{100}$ dollars ($604.59);

And now, at this time, said Thomas O'Day, proctor for said libellants, moving for a judgment and decree against said steamtug 'Resolute,' as aforesaid--

64 It is therefore considered and adjudged by the court that said libellants have and recover from said steamtug 'Resolute,' her boiler, engine, machinery, tackle, apparel, and furniture, and also against said claimants, A. B. Hammond and E. L. Bonner, and also against said surety, Henry Failing, the following sums—that is to say:

Henry E. Wilson, the sum of six hundred thirty and $\frac{20}{100}$ dollars ($630.20); Sydney G. Wolfkill, the sum of two hundred seventy-four and $\frac{38}{100}$ dollars (274.38); Thomas Nelson, the sum of five hundred one and $\frac{62}{100}$ dollars ($501.62), and Charles Jahn, the sum of six hundred four and $\frac{59}{100}$ dollars ($604.59), all in gold coin of the United States, and that said libellants and each of them further recover from said defendants herein named and each of them their costs and disbursements herein taxed and fixed by the court in the sum of $96.20, ninety-six and $\frac{20}{100}$ dollars.

And it is further ordered, considered, and adjudged by the court that in case said sums and costs be not paid within thirty days from this date that execution issue therefor.

CHARLES B. BELLINGER, *Judge.*"

And in open court the said claimants, by their said proctor, prayed that said appeal be allowed, and tendered a bond, with sufficient surety, to the approval of the court, and which bond is hereby approved, to stay proceedings herein until said appeal shall have been determined; and thereupon the court hereby allows said appeal and approves said bond, and execution is hereby stayed until the determination of said appeal, and this court does hereby certify and make known unto the Supreme Court of the United States that the only question arising upon the said appeal is the question as to whether

or not, under the facts stated in the amended libel and the exceptions thereto, this court acquired or had jurisdiction to hear or
65 pronounce the said decree.

And that the following is a copy of the said amended libel and the exceptions filed thereto:

Amended Libel.

By leave of the court first had and obtained, Henry E. Wilson, Sydney G. Wolfkill, Thomas Nelson, and Charles Jahn, of said district, mariners, late seamen on board the said steamtug Resolute, whereof W. J. Rickets lately was master, against said steamtug "Resolute," her boiler, engine, machinery, tackle, apparel, and furniture; also against all persons lawfully claiming said steamtug or lawfully intervening for their interest in said steamtug in a cause of wages, civil and maritime, alleges as follows:

Article I.

That your libellants are citizens and inhabitants of the district of Oregon.

Article II.

That the said steamtug "Resolute" was during the years 1892 and until about January 1st, 1894, and at all times hereinafter mentioned was engaged in the navigating of the waters of the Yaquina bay and Pacific ocean and waters tributary thereto within the district of Oregon and in the navigable waters within said district and of the waters tributary to the Pacific ocean in said district, and that said steamtug "Resolute" is now within said district of Oregon.

Article III.

That during all of said time said steamtug "Resolute" was owned by the Oregon Pacific Railroad Company, a corporation duly organized under and by virtue of the laws of the State of Oregon
66 for the purpose of building, owning, and operating a railway and steamships within the said State of Oregon and within the waters of said State of Oregon and the Pacific ocean and other waters tributary thereto.

Article IV.

That during all of said time said steamtug "Resolute" was in the possession and under the control of receivers of said corporation, duly appointed by the circuit court of the State of Oregon for the county of Benton in the suit of The Farmers' Loan and Trust Company, trustees, against The Oregon Pacific Railway Company and The Willamette Valley and Coast Railroad Company.

Article V.

That by the order of said court appointing the said receivers the said receivers were required, authorized, and directed to continue

the operation of said railroad and steamship line as a going concern in the transportation and carrying of freight and passengers as a common carrier and the said lines of railroad in connection with a line of steamships sailing on and navigating the waters of Yaquina bay, the Pacific ocean, and the navigable waters tributary thereto, including the waters of the navigable rivers within the State of Oregon.

Article VI.

That said steamship lines of said defendant- were operated in connection with said railroad, including said steamtug "Resolute," and that said steamtug "Resolute" was, while so operated by the said receivers and under the said orders of said court, operated by said receivers as a necessary integral part of said steamship line.

Article VII.

67 That during the years from January, 1892, until about January 1st, 1894, at the port of Yaquina bay, in the said district of Oregon, libellants were hired by said Oregon Pacific Railroad Company, acting through and by its said receivers so appointed as aforesaid, under a verbal contract as seamen and mariners upon said steamtug "Resolute."

Article VIII.

That said libellants served on said steamtug "Resolute" during said time under the instructions and charge of the master of said steamtug "Resolute" as follows: The libellant Henry E. Wilson, being engineer of said steamtug, at the agreed price of one hundred and fifty dollars ($150.00) per month; the libellant Thomas Nelson, being mate and assistant seaman on said steamtug, at the agreed price of seventy-five dollars ($75.00) per month; the libellant Charles Jahn, being a seaman in the capacity of sailor on said steamtug "Resolute," at the agreed price of sixty-five dollars ($65.00) per month; the libellant Sydney G. Wolfkill, being a fireman on said steamtug, at the agreed price of sixty-five dollars ($65.00) per month.

Article IX.

That for the due performance of services on said steamtug libellants signed no shipping articles, but were employed under a verbal contract with the receivers or duly authorized agents of said railway company, as hereinbefore stated, and with the consent and under the direction of the master and owners of said steamtug; that in pursuance of said employment the libellants entered into the service of said steamtug as such seamen as aforesaid on or about January 1st, 1892, and continued therein until on or about December 17th, 1893, when they were discharged without just cause
68 by the receivers of the said steamtug, the said employment of the said libellants being from month to month, and said libellants being entitled under their said contract as aforesaid to payment of wages in pursuance thereof to and inclusive of the entire month of December, 1893.

Article X.

That during the whole time your libellants were in the service of said steamtug they well and truly performed their duties according to their best ability and in accordance with good seamanship, and were obedient to all lawful demands of the said master, officers, and owners of said steamtug, and desire and ought to be paid for their said services the following sums due them and owing since January 1st, 1894: To libellant Henry E. Wilson, five hundred and fifty-five dollars ($555.00), with interest thereon from said date; to libellant S. G. Wolfkill, two hundred and forty and $\frac{50}{100}$ dollars ($240.50), with interest thereon from said date; to libellant Thomas Nelson, four hundred forty-eight and $\frac{44}{100}$ dollars ($448.44), with interest thereon from said date; to libellant Charles Jahn, the sum of five hundred twenty-nine and $\frac{92}{100}$ dollars ($529.92), with interest thereon from said date.

Article XI.

That the reason your libellants have not sooner enforced their said claims against said steamtug "Resolute" was on account of the fact that said steamtug "Resolute" was in the possession of said receivers of the circuit court of Benton county, State of Oregon, as aforesaid, duly appointed in a suit pending in said court, said court having general jurisdiction for the appointment of a receiver and said steamtug being in the custody of said receiver so ap-
69 pointed by said court and being operated under the express order of said court during all the times hereinbefore stated, on or about the — day of January, 1895, when said receiver was discharged and said steamtug "Resolute" released from the custody of said court and is now and since that date subject to seizure by this court under the claims of the libellants herein, this court refusing to seize said tug at the request of said libellants prior to the time said receiver was discharged as hereinbefore set forth and stated.

Article XII.

That on or about the — day of January, 1895, the property of said Oregon Pacific Railroad and Navigation Company, including said steamtug, was sold by order of said court of Benton county to the claimants herein, A. B. Hammond and E. L. Bonner, who now claim said steamtug as owners thereof, but libellants allege and charge the facts to be—

That said purchasers, A. B. Hammond and E. L. Bonner, had notice of the claims of your libellants for a lien against said steamtug "Resolute" for wages, as hereinbefore set forth, at and prior to the time of their purchase of said steamtug and purchased the same knowing that said steamtug Resolute was liable to the claims of your libellants as herein set forth and states.

Article XIII.

That the said suit of the Farmers' Loan and Trust Company against said Oregon Pacific Railroad Company and the Willamette

Valley and Coast Railway Company was brought for the purpose of foreclosing on a mortgage or deed of trust which conveyed to the said Farmers' Loan & Trust Company the entire property of the said Oregon Pacific Railroad Company for the purpose of
70 securing an issue of bonds made by the said Oregon Pacific Railroad Company, and that the said receivers so appointed as aforesaid were appointed for the purpose of operating said road and steamship line of the said Oregon Pacific Railroad Company, including said steamtug "Resolute," pending the foreclosure of said mortgage or deed of trust and were so appointed at the instance and request of the said Farmers' Loan and Trust Company, trustee, aforesaid, for the purpose of operating said road and said steamship line as a going concern and to prevent said property from depreciation in value by the inability of said Oregon Pacific Railroad Company to operate said road without the aid and assistance of receivers appointed in said suit.

Article XIV.

That the wages due said libellants and each of them have been demanded from time to time of the said Oregon Pacific Railroad Company and of said receivers and from the said Hammond and Bonner, and that all of said persons and each of them have refused to pay the wages due the libellants or pay any part thereof, and the said wages due the said libellants and each of them are a lien upon the said steamtug "Resolate" under general statute of the United States providing that the wages of seamen shall be a lien upon the vessel on which said seamen were employed.

Article XV.

That all and singular the premises are true and within the admiralty and — jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray that process in due form of law, according to the course of this honorable court in cases of ad-
71 miralty and maritime jurisdiction, may issue against said steamtug "Resolute," her engine, boilers, machinery, tackle, apparel, and furniture, and that all persons claiming any right, title, or interest therein may be cited to appear and answer upon oath all the matters aforesaid, and that this honorable court will be pleased to decree the payment of the wages herein, to wit:

To libellant Henry E. Wilson, the sum of five hundred and fifty-five dollars ($555.00), with interest thereon from January 1st, 1894; to libellant S. G. Wolfkill, two hundred forty and $\frac{50}{100}$ dollars ($240.50), with interest thereon from January 1st, 1894; to libellant Thomas Nelson, four hundred forty-eight and $\frac{44}{100}$ dollars ($448.44), with interest thereon from January 1st, 1894, and to libellant Charles Jahn, the sum of five hundred twenty-nine and $\frac{92}{100}$ dollars ($529.92), with interest thereon from January 1st, 1894, making a total of seventeen hundred seventy-three and $\frac{96}{100}$ dollars ($1,773.96) and interest thereon from January 1st, 1894, with costs and disbursements,

and that said steamtug "Resolute," her engines, boilers, tackle, apparel, and furniture, may be condemned and sold to pay the same, and that same may be declared a first lien upon said boat prior in time and right to all other claims or liens of whatsoever kind or nature, and that libellants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

Exceptions.

The exceptions of A. B. Hammond and E. L. Bonner, claimants herein, to the libel of said libellants allege that the said libel is informal and insufficient, as follows:

First. That the same shows that at the time the said libel-
72 lants and each of them were employed the said steamtug Resolute was in charge of and being operated by a receiver of the Oregon Pacific Railroad Company, a corporation, the owner of said steamtug, said receiver having been duly appointed by the circuit court of the State of Oregon for Benton county, and that all of the services performed by said libellants and each of them mentioned in said libel were performed while said steamtug was in the possession of and being operated by said receiver, and that no maritime or other lien arose by reason of such employment or the rendition of said services.

Second. That the said libel shows that this court has no jurisdiction in the premises.

November 4th, 1895.

CHARLES B. BELLINGER, *Judge.*

Endorsed: Filed November 4, 1895. E. D. McKee, clerk.

73 And afterwards, to wit, on Monday, the 20th day of January, 1896, the same being the 64th judicial day of the regular November term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

74 In the District Court of the United States for the District of Oregon.

THE TUG RESOLUTE—HENRY E. WILSON *et al.*, Libellants,
E. L. BONNER and A. B. HAMMOND, Claimants. } No. 3937.

JANUARY 20, 1896.

Now, at this day, on motion of Mr. William T. Muir, of counsel for the claimants, it is ordered that the time for filing the transcript of record in this cause on appeal to the United States Supreme Court be, and the same is hereby, extended thirty days.

CHARLES B. BELLINGER, *Judge.*

75 DISTRICT OF OREGON, *ss:*

I, E. D. McKee, clerk of the United States district court for the district of Oregon, do hereby certify that the foregoing transcript of record and proceedings in cause No. 3937, Henry E. Wilson *et al. vs.* The Steamtug Resolute, is a full, true, and correct transcript of the original record and proceedings in said cause as the same appear at my office and in my custody.

Seal United States District Court, Oregon.

In testimony whereof I have hereunto set my hand and affixed the seal of said district court, at Portland, in said district, this January 31, 1896.

E. D. McKEE,
Clerk United States District Court for the District of Oregon,
By G. H. MARSH,
Deputy Clerk.

Endorsed on cover: Case No. 16,200. Oregon D. C. U. S. Term No., 136. The Steamtug "Resolute," A. B. Hammond & E. L. Bonner, claimants, appellants, *vs.* Henry E. Wilson, Sydney G. Wolfkill, Thomas Nelson, and Charles Jahn. Filed February 21, 1896.